

06 - 786

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PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

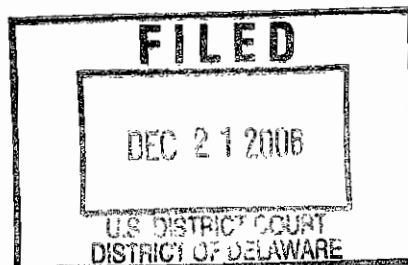
United States District Court		District <u>of Delaware</u>
Name (under which you were convicted): <u>LYNN HARRIS</u>		Docket or Case No.: <u> </u>
Place of Confinement: <u>Delaware Correctional Center</u>		Prisoner No.: <u>297441</u>
Petitioner (include the name under which you were convicted) <u>Lynn Harris</u> v. Respondent (authorized person having custody of petitioner) <u>Thomas Carroll</u>		
The Attorney General of the State of <u>Delaware</u>		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Superior Court of New Castle County
- (b) Criminal docket or case number (if you know): 193
- (a) Date of the judgment of conviction (if you know): 2-19-04
- (b) Date of sentencing: 4-23-04
- Length of sentence: 11 years
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case:
Attempted First Degree Robbery
Possession of A Firearm
Conspiracy
- (a) What was your plea? (Check one)

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____



(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☒

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Supreme

(b) Docket or case number (if you know): _____

(c) Result: AFFIRM

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: State Failed to Prove all of the elements of Attempted robbery, Officer lack of reasonable suspicion to stop defendant, Fail to read miranda warning time of arrest, Ineffective assistance

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Superior Court

(2) Docket or case number (if you know): 193

(3) Date of filing (if you know): March - 22 - 06

(4) Nature of the proceeding: Rule 61 Postconviction

(5) Grounds raised: State Failed to prove all the elements of Attempted First Degree Robbery, Officer lack of reasonable suspicion to stop defendant, Failed to read miranda warning time of arrest, Ineffective Assistance

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Summarily Dismissed

(8) Date of result (if you know): June 13 - 06

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

~~(c) If you filed any third petition, application, or motion, give the same information:~~ _____

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

~~(8) Date of result (if you know):~~ _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Officers lack for investigatory stop

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

whether the police had reasonable and articulable suspicion for investigatory stop of the defendant violated his USCA, Amend 4, and Del. C, Annotated Constitution, article 1 thru 6 of title 11, Del. C 1902

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: postconviction 61 motion

Name and location of the court where the motion or petition was filed: _____

Superior Court New Castle county

Docket or case number (if you know): 193
 Date of the court's decision: June-13-06
 Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a bearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Supreme Court Newcastle County

Docket or case number (if you know): 321

Date of the court's decision: September-22-06

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: OFFicer Failed to read miranda rights time of arrest

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

whether the defendant 5th Amendment rights were violated by police when Failed to Administer defendant miranda warning at time he was arrested and taken into custody

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? _____

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Postconviction 61 motion

Name and location of the court where the motion or petition was filed: _____

Superior Court New Castle County

Docket or case number (if you know): 193

Date of the court's decision: June-13-06

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Supreme Court New Castle County

Docket or case number (if you know): 321
 Date of the court's decision: September-22-06
 Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

whether counsel was ineffective when he failed
to file timely notice of appeal which is his
continued obligation pursuant to the supreme
court rule 26A in violation of his 6th Amendment
plus 14th Amendment due process right

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Postconviction 61 motion

Name and location of the court where the motion or petition was filed: _____

Supremecourt New Castle County

Docket or case number (if you know): 193

Date of the court's decision: June-13-06

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Supreme court New Castle County

Docket or case number (if you know): 321

Date of the court's decision: September-22-06

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: State Failed to Prove elements
of Attempted First degree Robbery ✓

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

whether the state Failed to prove their case beyond
a reasonable doubt under the Corpus Delicti Rule
to support the conviction of Attempted Robbery First degree
with a deadly weapon charge, in their case deprived
the appellant to a Fair trial under the 5th Amendment
Plus denial of his due process rights under the
14th Amendment

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Postconviction 61 motion

Name and location of the court where the motion or petition was filed: _____

Superior Court New Castle County

Docket or case number (if you know): 193

Date of the court's decision: June-13-06

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Supreme Court New Castle County

Docket or case number (if you know): 321

Date of the court's decision: September, 22, 06

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: William Deely

(d) At sentencing: William Deely

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* _____

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: Order For
release Petitioner From unlawful
imprisonment

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

(month, date, year).

Executed (signed) on 12-18-06 (date).

Lynn Harris

Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Certificate of Service

I, Lynn Harris JR, hereby certify that I have served a true
and correct cop(ies) of the attached: _____

_____ upon the following
parties/person (s):

1
COPY

Superior Court
TO: Prothonotary Office
500 N. King Street
Wilmington, Del 19801

TO: _____

2
COPIES

TO: Clerk, United States
District Court of Delaware
844 North King Street
Wilmington, DE, 19801

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE 19977.

On this _____ day of 12/15/06, ~~2005~~

Lynn Harris JR

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

1305005293

#43

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
STATE OF DELAWARE

Page 1

v.
LYNN HARRIS JR.
Name of Movant on Indictment

IN03-05-0806-R1
IN03-05-0808-R1
IN03-05-0811-R1

Correct Full Name of Movant

))))))

No.

(to be supplied by Prothonotary)

MOTION FOR POSTCONVICTION RELIEF

MOTION FOR POSTCONVICTION RELIEF

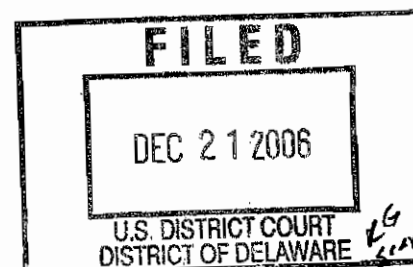
INSTRUCTIONS

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury.
- (2) All grounds for relief and supporting facts must be included, and all questions must be answered briefly in the proper space on the form.
- (3) Additional pages are not permitted. If more room is needed, use the reverse side of the sheet.
- (4) No citation of authorities is required. If legal arguments are submitted, this should be done in a separate memorandum.
- (5) Only convictions that were included in the same plea agreement or were tried together may be challenged in a single motion.
- (6) When the motion is completed, the original must be mailed to the Prothonotary in the county in which the judgment of conviction was entered. No fee is required.
- (7) The motion will be accepted if it conforms to these instructions. Otherwise, it will be returned with a notation as to the deficiency.

To return by mail:

New Castle County Prothonotary Kent County Prothonotary
500 N. King Street 38 The Green
Suite 500, Lower Level 1 Dover, DE 19901
Wilmington, DE 19801
Sussex County Prothonotary
P.O. Box 756
Georgetown, DE 19947

06-786



B1

MOTION

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1. County in which you were convicted NEW

CASTLE

2. Judge who imposed sentence RICHARD R.

COOCH

3. Date sentence was imposed APRIL 13,

2004

4. Offense(s) for which you were sentenced and length of sentence (s):

ATTEMPTED ROBBERY PLUS PFDCF, TEN
YEARS.

5. Do you have any sentence(s) to serve other than the sentence(s) imposed because of the

judgment(s) under attack in this motion? Yes () No (**X**)

If your answer is "yes," give the following information:

Name and location of court(s) which imposed the other sentence(s):

Date sentence(s) imposed:

NONE

Length of sentence(s)

NONE

6. What was the basis for the judgment(s) of conviction? (Check one)

Plea of guilty ()

Plea of guilty without admission of guilt ("Robinson plea") ()

Plea of nolo contendere ()

Verdict of jury ()

Finding of judge (non-jury trial) (**X**)

7. Judge who accepted plea or presided at trial -RICHARD R.

COOCH

8. Did you take the witness stand and testify? (Check one)

No trial () Yes (**X**) No ()

9. Did you appeal from the judgment of conviction? Yes (**X**) No ()

If your answer is "yes," give the following information:

Case number of appeal NO. 193

Date of court's final order or opinion APRIL 18,

2005

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10. Other than a direct appeal from the judgment(s) of conviction, have you filed any other motion(s) or petition(s) seeking relief from the judgment(s) in state or federal court?

Yes () No (X) How many? ()

If your answer is "yes," give the following information as to each:

Nature of proceeding(s)

NONE

Grounds raised

NONE

Was there an evidentiary hearing? **NONE**

Case number of proceeding(s)

NONE

Date(s) of court's final order(s) or opinion(s)

NONE

Did you appeal the result(s)? **NONE**

11. Give the name of each attorney who represented you at the following stages of the

proceedings relating to the judgment(s) under attack in this motion:

At plea of guilty or trial **WILLIAM**

DEELY

On appeal **WILLIAM**

DEELY

In any post conviction proceeding

12. State every ground on which you claim that your rights were violated. If you fail to set forth

all grounds in this motion, you may be barred from raising additional grounds at a later date. You

must state facts in support of the ground(s) which you claim. For your information, the following

is a list of frequently raised grounds for relief (you may also raise grounds that are not listed here):

double jeopardy; illegal detention, arrest, or search and seizure; coerced confession or guilty plea;

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uninformed waiver of the right to counsel, to remain silent, or to speedy trial;
denial of the right
to confront witnesses, to subpoena witnesses, to testify, or to effective
assistance of counsel;
suppression of favorable evidence; unfulfilled plea agreement.

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Ground one: State fail to produce substantive evidence and /or prove their case beyond a reasonable doubt and meet the prerequisite's to support the conviction under the corpus delicti rule and the said statutes of title 11301 and 222(5).

Supporting facts (state the facts briefly without citing cases):

Whether the state failed to provide their case beyond a reasonable doubt under the corpus delicti rule to support the conviction for attempted robbery with a deadly weapon charge. In their case in chief deprived the defendant to a fair trial under the 5th Amendment plus denial of his due process rights under the 14th Amendment.

Ground two: Officers lack for investigatory stop.

Supporting facts (state the facts briefly without citing cases):

Whether the police had reasonable and articulable suspicion for investigatory stop of the defendant, violated his usca Amend 4 and Del,C Annotated Constitution Article 1-6 of title 11 Del c, 1902.

Ground three: Officer failed to read Miranda Right time of arrest.

Supporting facts (state the facts briefly without citing cases):

Whether the defendant 5th Amendment Right were violated by police when failed to administer defendant Miranda warning at time he was arrested and taken into custody.

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so:

Ground four: Ineffective assistance of counsel

Supporting facts / state facts briefly without citing case. Whether counsel was ineffective when he failed to file a timely notice of appeal, which is his continued obligation pursuant to the Supreme Court rule 26A in violation of his 6th Amendment plus 14th Amendment due process rights.

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so: N/A

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

PRO-SE
Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

Date Signed

Signature of Movant
(Notarization not required)

Ground one: _____

Supporting facts (state the facts briefly without citing cases):

Ground two: _____

Supporting facts (state the facts briefly without citing cases):

Ground three: _____

Supporting facts (state the facts briefly without citing cases):

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so: _____

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

3/19/06
Date Signed

Lynn A. Harris JR
Signature of Movant
(Notarization not required)

#46

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

RYANT N. HARRIS A/K/A
LYNN HARRIS,

Defendant

I.D. #0305005239

Submitted: March 22, 2006

Decided: June 13, 2006

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Stephen M. Walther, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Ryant N. Harris a/k/a Lynn Harris, Smyrna, Delaware, *pro se*.

COOCH, J.

This 13th day of June, 2006, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. Ryant N. Harris a/k/a Lynn Harris ("Defendant")¹ was found guilty and convicted, after a bench trial on February 19, 2004, of Attempted

¹ It is not clear from the record or the caption precisely what Defendant's name is.

Robbery First Degree, Possession of a Firearm During the Commission of a Felony, and Conspiracy Second Degree. On April 23, 2004, Defendant was sentenced to a total of 10 years at Level V, followed by 3 years at decreasing levels of supervision. Defendant appealed his conviction on four grounds: (1) that the State failed to prove its case beyond a reasonable doubt, (2) that the police lacked reasonable suspicion for the initial stop, (3) that his Miranda rights were violated when the police, with weapons drawn, asked Defendant if he had any weapons on him, and (4) that trial counsel provided ineffective assistance.² On April 11, 2005, the Delaware Supreme Court affirmed the convictions.³

2. Defendant filed this timely motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on March 22, 2006. Defendant alleges similar, if not the exact same, grounds for postconviction relief as the grounds brought upon direct appeal. These grounds are set forth here *in toto*:

1. State fail [sic] to produce substantive evidence and/or prove their case beyond a reasonable doubt and meet the prerequisite's [sic] to support the conviction under the corpus delicti rule and the said statutes [sic] of title 11301 and 222(5).

Supporting facts: Whether the state failed to provide [sic] their case beyond a reasonable doubt under the corpus delicti rule to support the conviction for attempted robbery with a deadly weapon charge. In their case in chief deprived the defendant to a fair trial under the 5th

² *Harris v. State*, 2005 WL 850421 (Del. Sup.).

³ *Id.* (affirming trial court's decisions regarding the first three issues brought by defendant on appeal and declining to consider defendant's ineffective assistance of counsel claim).

Amendment plus denial of his due process rights under the 14th Amendment.

2. Officers lack for investigatory stop.

Supporting facts: Whether the police had reasonable and articulable suspicion for investigatory stop of the defendant, violated his usca Amend 4 [sic] and Del,C Annotated Article 1 [sic] – 6 of title 11 Del c, 1902 [sic].

3. Officer failed to read Miranda Right time of arrest [sic].

Supporting facts: Whether the defendant 5th Amendment Right were violated by police when failed to administer defendant Miranda warning [sic] at time he was arrested and taken into custody.

4. Ineffective assistance of counsel.

Supporting facts: Whether counsel was ineffective when he failed to file a timely notice of appeal, which is his continued obligation pursuant to the Supreme Court rule 26A [sic] in violation of his 6th Amendment plus 14th Amendment due process rights.

Upon review of Defendant's motion, all of the above grounds are conclusory and, thus, the motion is **SUMMARILY DISMISSED**.

3. Superior Court Criminal Rule 6 .(d)(4) provides that "[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in this case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified." Defendant's motion for postconviction relief will be summarily dismissed where no facts supporting Defendant's contentions are offered and the claims are conclusory.⁴

⁴ *State v. Cooper*, 2001 WL 1729147 (Del. Super.) (summarily dismissing defendant's claims of false testimony and ineffective assistance of counsel as defendant did not offer supporting facts and the claims were conclusory). See also *Jordan v. State*, 1994 WL 466142 (Del. Supr.); *State v. Brittingham*, 1994 WL 750341, * 2 (Del. Super.) (citing *Younger v. State*, 580 A.2d at 556 (holding that conclusory allegations are legally insufficient to prove ineffective assistance of counsel)).

4. Regardless of the fact that the grounds brought by Defendant in this instant motion are almost mirror images of the issues brought on direct appeal, Defendant's contentions here are completely conclusory as they are not supported by any facts in the record nor by any case law brought to the Court's attention by Defendant. They are merely reiterations of the issues already decided by the Delaware Supreme Court. Thus, Defendant's first three claims are **SUMMARILY DISMISSED**.

5. The one issue not decided by the Supreme Court, Defendant's ineffective assistance of counsel claim, is also conclusory because it points to no facts or case law in support. Thus, Defendant fourth ground for postconviction relief is conclusory and is **SUMMARILY DISMISSED**.

6. For the reasons stated, Defendant's Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.


Richard R. Cooch, J.

oc: Prothonotary
cc: Investigative Services
William T. Deely, Esquire

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on August 15, 2006, he caused two copies of the attached document to be placed in the U.S. Mail, first class postage prepaid, addressed to the following:

Lynn Harris
No. 297441
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, DE 19977


Loren C. Meyers
Chief of Appeals Division
Dept. of Justice

#46

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

RYANT N. HARRIS A/K/A
LYNN HARRIS,

Defendant

I.D. #0305005239

Submitted: March 22, 2006

Decided: June 13, 2006

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Stephen M. Walther, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Ryant N. Harris a/k/a Lynn Harris, Smyrna, Delaware, *pro se*.

COOCH, J.

This 13th day of June, 2006, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. Ryant N. Harris a/k/a Lynn Harris ("Defendant")¹ was found guilty and convicted, after a bench trial on February 19, 2004, of Attempted

¹ It is not clear from the record or the caption precisely what Defendant's name is.

Robbery First Degree, Possession of a Firearm During the Commission of a Felony, and Conspiracy Second Degree. On April 23, 2004, Defendant was sentenced to a total of 10 years at Level V, followed by 3 years at decreasing levels of supervision. Defendant appealed his conviction on four grounds: (1) that the State failed to prove its case beyond a reasonable doubt, (2) that the police lacked reasonable suspicion for the initial stop, (3) that his Miranda rights were violated when the police, with weapons drawn, asked Defendant if he had any weapons on him, and (4) that trial counsel provided ineffective assistance.² On April 11, 2005, the Delaware Supreme Court affirmed the convictions.³

2. Defendant filed this timely motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on March 22, 2006. Defendant alleges similar, if not the exact same, grounds for postconviction relief as the grounds brought upon direct appeal. These grounds are set forth here *in toto*:

1. State fail [sic] to produce substantive evidence and/or prove their case beyond a reasonable doubt and meet the prerequisite's [sic] to support the conviction under the corpus delicti rule and the said statutes [sic] of title 11301 and 222(5).

Supporting facts: Whether the state failed to provide [sic] their case beyond a reasonable doubt under the corpus delicti rule to support the conviction for attempted robbery with a deadly weapon charge. In their case in chief deprived the defendant to a fair trial under the 5th

² *Harris v. State*, 2005 WL 850421 (Del. Supl.).

³ *Id.* (affirming trial court's decisions regarding the first three issues brought by defendant on appeal and declining to consider defendant's ineffective assistance of counsel claim).

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on August 15, 2006, he caused two copies of the attached document to be placed in the U.S. Mail, first class postage prepaid, addressed to the following:

Lynn Harris
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Smyrna, DE 19977


Loren C. Meyers
Chief of Appeals Division
Dept. of Justice

1305005293

#43

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
STATE OF DELAWARE

Page 1

v.
LYNN HARRIS JR.
Name of Movant on Indictment

IN03-05-0806-R1
IN03-05-0808-R1
IN03-05-0811-R1

Correct Full Name of Movant

))))))

No. _____

(to be supplied by Prothonotary)

MOTION FOR POSTCONVICTION RELIEF

MOTION FOR POSTCONVICTION RELIEF

INSTRUCTIONS

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury.
- (2) All grounds for relief and supporting facts must be included, and all questions must be answered briefly in the proper space on the form.
- (3) Additional pages are not permitted. If more room is needed, use the reverse side of the sheet.
- (4) No citation of authorities is required. If legal arguments are submitted, this should be done in a separate memorandum.
- (5) Only convictions that were included in the same plea agreement or were tried together may be challenged in a single motion.
- (6) When the motion is completed, the original must be mailed to the Prothonotary in the county in which the judgment of conviction was entered. No fee is required.
- (7) The motion will be accepted if it conforms to these instructions. Otherwise, it will be returned with a notation as to the deficiency.

To return by mail:

New Castle County Prothonotary Kent County Prothonotary
500 N. King Street 38 The Green
Suite 500, Lower Level 1 Dover, DE 19901
Wilmington, DE 19801
Sussex County Prothonotary
P.O. Box 756
Georgetown, DE 19947

MOTION

Page 2

1. County in which you were convicted NEW

CASTLE

2. Judge who imposed sentence RICHARD R.

COOCH

3. Date sentence was imposed APRIL 13,
2004

4. Offense(s) for which you were sentenced and length of sentence (s):
ATTEMPTED ROBBERY PLUS PFDCE, TEN
YEARS.

5. Do you have any sentence(s) to serve other than the sentence(s) imposed because of the judgment(s) under attack in this motion? Yes () No (**X**)
If your answer is "yes," give the following information:
Name and location of court(s) which imposed the other sentence(s):

Date sentence(s) imposed:

NONE

Length of sentence(s)

NONE

6. What was the basis for the judgment(s) of conviction? (Check one)

Plea of guilty ()

Plea of guilty without admission of guilt ("Robinson plea") ()

Plea of nolo contendere ()

Verdict of jury ()

Finding of judge (non-jury trial) (**X**)

7. Judge who accepted plea or presided at trial - **RICHARD R.**

COOCH

8. Did you take the witness stand and testify? (Check one)

No trial () Yes (**X**) No ()

9. Did you appeal from the judgment of conviction? Yes (**X**) No ()

If your answer is "yes," give the following information:

Case number of appeal NO. 193

Date of court's final order or opinion APRIL 18,
2005

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LYNN HARRIS,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

§

§ No. 321, 2006

§

§

§ Court Below—Superior Court

§ of the State of Delaware

§ in and for New Castle County

§ Cr. ID No. 0305005293

§

§

§

Submitted: August 15, 2006
Decided: September 22, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 22nd day of September 2006, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Lynn Harris, filed an appeal from the Superior Court's June 13, 2006 order summarily dismissing his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and AFFIRM.

the State failed to prove its case, that the police lacked reasonable suspicion to stop him and that the police failed to give him the proper Miranda warnings.

(6) In order to prevail on his claims of ineffective assistance of counsel, Harris must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.³ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁴

(7) As to Harris' first claim of ineffective assistance, the record reflects that, after Harris himself filed a notice of appeal in this Court, the Clerk instructed Harris' attorney to file a formal notice of appeal by a date certain. Because Harris' attorney did as the Clerk instructed, Harris' first contention is without merit. As to Harris' two remaining claims of ineffective assistance, the record reflects that a no-merit brief was filed on Harris' behalf under Supreme Court Rule 26(c), including the points that Harris wished this Court to consider. Ultimately, however, this Court determined that Harris' direct appeal was without merit. Harris has, thus,

³ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁴ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

#46

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

RYANT N. HARRIS A/K/A
LYNN HARRIS,

Defendant

I.D. #0305005239

Submitted: March 22, 2006

Decided: June 13, 2006

Upon Defendant's Motion for Postconviction Relief.
SUMMARILY DISMISSED.

ORDER

Stephen M. Walther, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

Ryant N. Harris a/k/a Lynn Harris, Smyrna, Delaware, *pro se*.

COOCH, J.

This 13th day of June, 2006, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. Ryant N. Harris a/k/a Lynn Harris ("Defendant")¹ was found guilty and convicted, after a bench trial on February 19, 2004, of Attempted

¹ It is not clear from the record or the caption precisely what Defendant's name is.

Robbery First Degree, Possession of a Firearm During the Commission of a Felony, and Conspiracy Second Degree. On April 23, 2004, Defendant was sentenced to a total of 10 years at Level V, followed by 3 years at decreasing levels of supervision. Defendant appealed his conviction on four grounds: (1) that the State failed to prove its case beyond a reasonable doubt, (2) that the police lacked reasonable suspicion for the initial stop, (3) that his Miranda rights were violated when the police, with weapons drawn, asked Defendant if he had any weapons on him, and (4) that trial counsel provided ineffective assistance.² On April 11, 2005, the Delaware Supreme Court affirmed the convictions.³

2. Defendant filed this timely motion for postconviction relief pursuant to Superior Court Criminal Rule 61 on March 22, 2006. Defendant alleges similar, if not the exact same, grounds for postconviction relief as the grounds brought upon direct appeal. These grounds are set forth here *in toto*:

1. State fail [sic] to produce substantive evidence and/or prove their case beyond a reasonable doubt and meet the prerequisite's [sic] to support the conviction under the corpus delicti rule and the said statutes [sic] of title 11301 and 222(5).

Supporting facts: Whether the state failed to provide [sic] their case beyond a reasonable doubt under the corpus delicti rule to support the conviction for attempted robbery with a deadly weapon charge. In their case in chief deprived the defendant to a fair trial under the 5th

² *Harris v. State*, 2005 WL 850421 (Del. Supr.).

³ *Id.* (affirming trial court's decisions regarding the first three issues brought by defendant on appeal and declining to consider defendant's ineffective assistance of counsel claim).

Amendment plus denial of his due process rights under the 14th Amendment.

2. Officers lack for investigatory stop.

Supporting facts: Whether the police had reasonable and articulable suspicion for investigatory stop of the defendant, violated his usca Amend 4 [sic] and Del,C Annotated Article 1 [sic] – 6 of title 11 Del c, 1902 [sic].

3. Officer failed to read Miranda Right time of arrest [sic].

Supporting facts: Whether the defendant 5th Amendment Right were violated by police when failed to administer defendant Miranda warning [sic] at time he was arrested and taken into custody.

4. Ineffective assistance of counsel.

Supporting facts: Whether counsel was ineffective when he failed to file a timely notice of appeal, which is his continued obligation pursuant to the Supreme Court rule 26A [sic] in violation of his 6th Amendment plus 14th Amendment due process rights.

Upon review of Defendant's motion, all of the above grounds are conclusory and, thus, the motion is **SUMMARILY DISMISSED**.

3. Superior Court Criminal Rule 6 (d)(4) provides that "[i]f it plainly appears from the motion for postconviction relief and the record of prior proceedings in this case that the movant is not entitled to relief, the judge may enter an order for its summary dismissal and cause the movant to be notified." Defendant's motion for postconviction relief will be summarily dismissed where no facts supporting Defendant's contentions are offered and the claims are conclusory.⁴

⁴ *State v. Cooper*, 2001 WL 1729147 (Del. Super.) (summarily dismissing defendant's claims of false testimony and ineffective assistance of counsel as defendant did not offer supporting facts and the claims were conclusory). *See also Jordan v. State*, 1994 WL 466142 (Del. Supr.); *State v. Brittingham*, 1994 WL 750341, * 2 (Del. Super.) (citing *Younger v. State*, 580 A.2d at 556 (holding that conclusory allegations are legally insufficient to prove ineffective assistance of counsel)).

4. Regardless of the fact that the grounds brought by Defendant in this instant motion are almost mirror images of the issues brought on direct appeal, Defendant's contentions here are completely conclusory as they are not supported by any facts in the record nor by any case law brought to the Court's attention by Defendant. They are merely reiterations of the issues already decided by the Delaware Supreme Court. Thus, Defendant's first three claims are **SUMMARILY DISMISSED**.

5. The one issue not decided by the Supreme Court, Defendant's ineffective assistance of counsel claim, is also conclusory because it points to no facts or case law in support. Thus, Defendant fourth ground for postconviction relief is conclusory and is **SUMMARILY DISMISSED**.

6. For the reasons stated, Defendant's Motion for Postconviction Relief is **SUMMARILY DISMISSED**.

IT IS SO ORDERED.



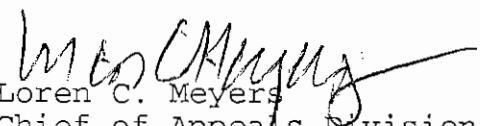
Richard R. Cooch, J.

cc: Prothonotary
cc: Investigative Services
William T. Deely, Esquire

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on August 15, 2006, he caused two copies of the attached document to be placed in the U.S. Mail, first class postage prepaid, addressed to the following:

Lynn Harris
No. 297441
Delaware Correctional Center
1181 Paddock Rd.
Smyrna, DE 19977


Loren C. Meyers
Chief of Appeals Division
Dept. of Justice

1305005293

#43

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
STATE OF DELAWARE

Page 1

v.
LYNN HARRIS JR.
Name of Movant on Indictment

IN03-05-0806-R1
IN03-05-0808-R1
IN03-05-0810-R1

Correct Full Name of Movant

))))))

No.

(to be supplied by Prothonotary)

MOTION FOR POSTCONVICTION RELIEF

MOTION FOR POSTCONVICTION RELIEF

INSTRUCTIONS

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury.
- (2) All grounds for relief and supporting facts must be included, and all questions must be answered briefly in the proper space on the form.
- (3) Additional pages are not permitted. If more room is needed, use the reverse side of the sheet.
- (4) No citation of authorities is required. If legal arguments are submitted, this should be done in a separate memorandum.
- (5) Only convictions that were included in the same plea agreement or were tried together may be challenged in a single motion.
- (6) When the motion is completed, the original must be mailed to the Prothonotary in the county in which the judgment of conviction was entered. No fee is required.
- (7) The motion will be accepted if it conforms to these instructions. Otherwise, it will be returned with a notation as to the deficiency.

To return by mail:

New Castle County Prothonotary Kent County Prothonotary
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Wilmington, DE 19801
Sussex County Prothonotary
P.O. Box 756
Georgetown, DE 19947

MOTION

Page 2

1. County in which you were convicted NEW

CASTLE

2. Judge who imposed sentence RICHARD R.

COOCH

3. Date sentence was imposed APRIL 13,

2004

4. Offense(s) for which you were sentenced and length of sentence (s):

ATTEMPTED ROBBERY PLUS PFDCF, TEN
YEARS.

5. Do you have any sentence(s) to serve other than the sentence(s) imposed because of the

judgment(s) under attack in this motion? Yes () No (**X**)

If your answer is "yes," give the following information:

Name and location of court(s) which imposed the other sentence(s):

Date sentence(s) imposed:

NONE

Length of sentence(s)

NONE

6. What was the basis for the judgment(s) of conviction? (Check one)

Plea of guilty ()

Plea of guilty without admission of guilt ("Robinson plea") ()

Plea of nolo contendere ()

Verdict of jury ()

Finding of judge (non-jury trial) (**X**)

7. Judge who accepted plea or presided at trial **-RICHARD R.**

COOCH

8. Did you take the witness stand and testify? (Check one)

No trial () Yes (**X**) No ()

9. Did you appeal from the judgment of conviction? Yes (**X**) No ()

If your answer is "yes," give the following information:

Case number of appeal NO. 193

Date of court's final order or opinion **APRIL 18,**

2005

Page 3

10. Other than a direct appeal from the judgment(s) of conviction, have you filed any other motion(s) or petition(s) seeking relief from the judgment(s) in state or federal court?

Yes () No (X) How many? ()

If your answer is "yes," give the following information as to each:

Nature of proceeding(s)

NONE

Grounds raised

NONE

Was there an evidentiary hearing? **NONE**

Case number of proceeding(s)

NONE

Date(s) of court's final order(s) or opinion(s)

NONE

Did you appeal the result(s)? **NONE**

11. Give the name of each attorney who represented you at the following stages of the

proceedings relating to the judgment(s) under attack in this motion:

At plea of guilty or trial **WILLIAM**

DEELY

On appeal **WILLIAM**

DEELY

In any post conviction proceeding

12. State every ground on which you claim that your rights were violated. If you fail to set forth

all grounds in this motion, you may be barred from raising additional grounds at a later date. You

must state facts in support of the ground(s) which you claim. For your information, the following

is a list of frequently raised grounds for relief (you may also raise grounds that are not listed here):

double jeopardy; illegal detention, arrest, or search and seizure; coerced confession or guilty plea;

Page 4

uninformed waiver of the right to counsel, to remain silent, or to speedy trial;
denial of the right
to confront witnesses, to subpoena witnesses, to testify, or to effective
assistance of counsel;
suppression of favorable evidence; unfulfilled plea agreement.

Page 5

Ground one: State fail to produce substantive evidence and /or prove their case beyond a reasonable doubt and meet the prerequisite's to support the conviction under the corpus delicti rule and the said statutes of title 11301 and 222(5).

Supporting facts (state the facts briefly without citing cases):

Whether the state failed to provide their case beyond a reasonable doubt under the corpus delicti rule to support the conviction for attempted robbery with a deadly weapon charge. In their case in chief deprived the defendant to a fair trial under " the 5th Amendment plus denial of his due process rights under the 14th Amendment.

Ground two: Officers lack for investigatory stop.

Supporting facts (state the facts briefly without citing cases):

Whether the police had reasonable and articulable suspicion for investigatory stop of the defendant, violated his usca Amend 4 and Del,C Annotated Constitution Article 1-6 of title 11 Del c, 1902.

Ground three: Officer failed to read Miranda Right time of arrest.

Supporting facts (state the facts briefly without citing cases):

Whether the defendant 5th Amendment Right were violated by police when failed to administer defendant Miranda warning at time he was arrested and taken into custody.

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so:

Ground four: Ineffective assistance of counsel

Supporting facts / state facts briefly without citing case. Whether counsel was ineffective when he failed to file a timely notice of appeal, which is his continued obligation pursuant to the Supreme Court rule 26A in violation of his 6th Amendment plus 14th Amendment due process rights.

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so: N/A

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

____ PRO-SE
Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

Date Signed

Signature of Movant
(Notarization not required)

Ground one: _____

Supporting facts (state the facts briefly without citing cases):

Ground two: _____

Supporting facts (state the facts briefly without citing cases):

Ground three: _____

Supporting facts (state the facts briefly without citing cases):

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so: _____

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

3/19/06
Date Signed

Lynn Harris JR
Signature of Movant
(Notarization not required)

North Dupont Highway?

A. Right here?

Q. Yes.

A. It's a traffic light. There's no light.

Q. No artificial lighting?

A. No night-lights, so to speak.

Q. Can you give us some idea of how far it is from 325 South Dupont Highway to Dupont Highway itself?

A. Fifty feet maybe.

Q. Okay. Can you demonstrate, please, what area you're referring to?

A. Fifty feet to this area here.

Q. Okay. Now, did there come a time that -- I believe you already indicated there came a time that you responded to that area; correct?

A. Yes.

Q. And prior to responding to that area, what information had you received with regard to any criminal activity in the area?

A. For this incident or prior?

Q. For this particular incident.

A. For this incident, the report came from a

subject that lived in the house right here at 325 South Dupont. And the report was that there's a vehicle in her driveway, which was not supposed to be there. And there were subjects getting out of the vehicle, and they were putting on masks. And one of them grabbed what appeared to be a pipe and placed it inside their clothing, got out from the vehicle, and then walked in the northern direction towards Pockets.

Q. Now, was there any specific description with regard to the hat itself?

A. She described that as a mask.

Q. Was there any indication of what was being done with the mask?

A. She said they just put masks on over their heads and were walking towards Pockets.

Q. Was there any indication as to where these individuals were walking towards Pockets?

A. North. I mean, north towards Pockets, as I recall.

Q. But no specific route as to which was being taken; correct?

A. No.

Q. Now, when you responded to the area, what happened?

A. As I responded, and we were en route to the area, I was coming from New Castle area, so I was coming south. And as I arrived, actually another unit arrived about the same time that I did. And these are going to be my patrol cars. But as we arrived, the other units stopped in the left lane, and I had stopped on this shoulder right here, because I noticed Mr. Harris walking northbound in the southbound shoulder. He was dressed in blue coveralls and a knit hat on his head.

Q. Now, at that point, all right, did you place any significance on the knit hat?

A. Yes, because I recall from the dispatch that subjects exiting the vehicle were wearing masks. And a lot of times, from prior robberies, subjects use a knit hat to cover their face to commit the robberies. They cut holes out in the mask, and they use those to cover their identity during the robberies.

Q. Now, prior to arriving at the scene, I believe you indicated that there was a reference to a metal pipe?

A. Correct.

Q. And what information specifically did you receive in reference to this metal pipe?

A. Passed on through dispatch?

Q. Yes.

A. Dispatch advised that the person resided at this residence, stated that when they got out, they put the masks on. One of them grabbed the pipe from the vehicle, which she believed to be a pipe from the vehicle, and placed it inside, or placed it inside their clothing, and then began to walk towards the Pockets area.

Q. Now, can you give us some idea of where this individual you initially stopped, how far was it from the intersection of North Dupont Highway?

A. From right here. Again, this is not to scale, because I'm definitely not an artist; but he was standing on the shoulder right next to this, which would be the white solid line, just a few feet south of the intersection. It was enough that when I stopped him and after contacting him, I was able to look over and see the vehicle still parked in the driveway.

<p>1 Q. I want an approximation between where that 2 vehicle was and the individual that you stopped. I 3 know it's diagonal. 4 A. Approximately 50 feet there, and maybe ten, 5 250 or so feet this way. So, um, maybe 75 feet or 6 so, 100 feet. 7 Q. Was there anything that obstructed your 8 view? 9 A. Nothing at all. Much not to scale here, but 10 when I got out, I may have had contact with him. 11 There's nothing right here that blocked my view. 12 Like I said, the trees are in this area here. Um, I 13 was able to look right across and see the vehicle. 14 Q. What's the approximation on that diagonal? 15 A. Diagonal, approximately 75 feet. 16 Q. Could you put that in? 17 A. Draw it in across here? 18 Q. Sure. 19 A. (Corp. Slover complies.) 20 Okay. 21 Q. Now, what direction was this individual 22 walking? 23 A. Northbound.</p>	<p>17 1 the parking lot is in front of the business, but 2 north of the business. 3 Q. Can you describe the area between Pockets 4 and southbound 13? 5 A. Like I said, this is all tree area here, 6 this way. There's nothing that separates Pockets 7 from the southbound lanes of 13. 8 Q. Okay. Now, when you stopped this 9 individual, you stopped him on the shoulder; correct? 10 A. Correct. 11 Q. Can you describe the shoulder area? 12 A. It's a flat asphalt surface. 13 Q. Were there any other pedestrians or anybody 14 walking in that area? 15 A. No, sir. 16 Q. Is that the kind of area that pedestrians 17 normally walk? 18 A. No. 19 Q. Was this individual walking along the 20 highway without a light? 21 A. Yes. 22 Q. Now, can you tell the Court, please, what 23 was in your mind right before you pulled over?</p>	<p>19</p>
<p>1 Q. And would you reference that? 2 A. (Corp. Slover complies.) 3 Yes. 4 Q. Now -- 5 A. North. 6 Q. How far from this -- did you know how far 7 was this individual from Pockets when you stopped 8 him? 9 A. A couple hundred -- I would say 150 feet 10 maybe south of -- 11 Q. So about 50 yards? 12 A. 50 yards would be a good estimation. This 13 is where Pockets would be, so I would say 150 feet. 14 Q. How far is Pockets from the northbound lanes 15 of Dupont Highway? 16 A. Southbound lanes? 17 Q. Excuse me. 18 A. Approximately 50 feet. It basically sits 19 right on the roadway. Approximately 50 feet off the 20 road. 21 Q. And is there a parking lot in front of 22 Pockets? 23 A. Pockets actually faces this direction, and</p>	<p>18 1 A. As I just came from the dispatch -- I mean, 2 it was dispatch. It was subjects that placed masks 3 over their heads, and one of them placed a pipe in 4 their clothing. And they were walking from 325 South 5 Dupont to Pockets. Now, I knew that, obviously from 6 the dispatch, this vehicle -- these people weren't 7 supposed to be at 325 South Dupont Highway, okay? 8 They just placed masks over their heads, put a pipe 9 in -- what appeared to be a pipe inside their clothes 10 and were walking towards Pockets. From prior 11 complaints, you know, it sounded like a robbery was 12 getting ready to happen at Pockets. 13 Q. Can I ask you to stop a minute? 14 What significance did you place on the 15 report from the reporting person that it appeared to 16 be a pipe? How did you interpret that? 17 A. I know some people can -- you know, are not 18 familiar with certain guns or any kind of weapons. 19 So the significance in a pipe is this could be a 20 weapon that this person put inside their clothing, 21 and this reporting person may not be able to 22 determine that. 23 Q. But what conclusions did you draw from all</p>	<p>20</p>

<p>1 the circumstances available to you with regard to</p> <p>2 that pipe description?</p> <p>3 A. It could possibly be a shotgun.</p> <p>4 Q. Were you concerned for your safety at all</p> <p>5 when you stopped this individual?</p> <p>6 A. Absolutely. Because like I said, my</p> <p>7 thinking is this person might have a shotgun on them.</p> <p>8 And when I pulled over to the shoulder, like I said,</p> <p>9 one unit was in the right lane, and I was on the</p> <p>10 shoulder. And this subject, Mr. Harris, was walking</p> <p>11 northbound, had the knit hat on, had coveralls on.</p> <p>12 Um, so I mean, I immediately got out of my vehicle,</p> <p>13 because, you know, I didn't -- at this point, I</p> <p>14 didn't know if he had a weapon on him or not, and I</p> <p>15 was concerned for my safety. I don't want to be</p> <p>16 sitting in a car when someone pulls out a weapon and</p> <p>17 I'm sitting there.</p> <p>18 Q. Now, when you arrived, pulled up, were you</p> <p>19 in a marked State Police --</p> <p>20 A. Yes, Delaware State --</p> <p>21 Q. The other vehicle was whom?</p> <p>22 A. Trooper McLaughlin.</p> <p>23 Q. Was that also a marked police vehicle?</p>	<p>21</p> <p>1 custody, took a hold of the shotgun. He had a gun.</p> <p>2 I didn't want to go any further than what it already</p> <p>3 has.</p> <p>4 Q. Did you pat him down?</p> <p>5 A. At that point, I patted him down, and I</p> <p>6 actually felt the shotgun inside of his clothing, at</p> <p>7 which time I unzipped the coveralls, removed the</p> <p>8 shotgun from his clothing.</p> <p>9 Q. And did you then take him into custody?</p> <p>10 A. Yes.</p> <p>11 Q. Now, is that individual in the courtroom</p> <p>12 today?</p> <p>13 A. Yes, he is.</p> <p>14 Q. Could you identify him, please?</p> <p>15 A. Mr. Harris is sitting here in the white DOCs</p> <p>16 (indicating).</p> <p>17 MR. WALTHER: Let the record reflect the</p> <p>18 witness has identified the defendant Lynn Harris also</p> <p>19 known as Ryant Harris. That's all I have.</p> <p>20 Your Honor, could I have that marked as an</p> <p>21 exhibit?</p> <p>22 THE COURT: You may. Mark it as State's 1.</p> <p>23 (State's Exhibit No. 1, a diagram, marked</p>
<p>22</p> <p>1 A. Yes.</p> <p>2 Q. When you responded, did you have your 360s</p> <p>3 on?</p> <p>4 A. As I responded, no.</p> <p>5 Q. How about right before you stopped?</p> <p>6 A. As I stopped, we both activated our</p> <p>7 equipment because, I mean, especially him, he's</p> <p>8 sitting in the right lane.</p> <p>9 Q. When you say "him," who are you talking</p> <p>10 about?</p> <p>11 A. I'm sorry. Trooper McLaughlin.</p> <p>12 Q. Okay. Would it be fair to say at that point</p> <p>13 that he was seized, he wasn't free to leave, was he?</p> <p>14 A. That's correct.</p> <p>15 Q. All right. What did you do next?</p> <p>16 A. Um, as I explained to you, I exited my</p> <p>17 vehicle, because I didn't know if he had a weapon on</p> <p>18 him or not. I didn't want to be sitting in my</p> <p>19 vehicle, if that's the case, so I asked him to turn</p> <p>20 around for me, and I -- as I went to pat him down,</p> <p>21 before I put my hands on him, he said, "Oh, I have a</p> <p>22 shotgun inside my clothing."</p> <p>23 At that point, I immediately took him into</p>	<p>24</p> <p>1 for identification.)</p> <p>2 THE PROTHONOTARY: So marked, Your Honor.</p> <p>3 THE COURT: Thank you.</p> <p>4 Mr. Deely, would you like Corporal Slover to</p> <p>5 remain by the diagram?</p> <p>6 MR. DEELY: It'd probably be wise,</p> <p>7 Your Honor.</p> <p>8 -----</p> <p>9 CROSS-EXAMINATION</p> <p>10 -----</p> <p>11 BY MR. DEELY:</p> <p>12 Q. Good afternoon, Corporal Slover.</p> <p>13 A. How are you?</p> <p>14 Q. Corporal Slover, do you remember what the</p> <p>15 weather was that night?</p> <p>16 A. Clear.</p> <p>17 Q. It was clear?</p> <p>18 A. I'm sorry. No. I was afraid of that one.</p> <p>19 It was raining very bad that night. It was dark out.</p> <p>20 And I remember being drenched that night from being</p> <p>21 out in the rain, from being out on the scene that</p> <p>22 night.</p> <p>23 Q. It was a cool evening, wasn't it?</p>

25
 1 A. I don't remember the temperature, but I do
 2 remember being drenched that night.
 3 Q. Do you remember exactly what the RECOM call
 4 said?
 5 A. Well, I believe -- word for word, I don't
 6 recall beyond that, but I believe I described that --
 7 Q. Let me go through it. How many people got
 8 out of the car at 325 Dupont Highway for the RECOM
 9 call?
 10 A. According to RECOM, I don't recall exactly
 11 how many got out of there.
 12 Q. More than one?
 13 A. Yes.
 14 Q. More than two?
 15 A. I don't recall exactly -- the exact number.
 16 Q. But it was more than one?
 17 A. Yes.
 18 Q. Did it say where the individuals went? Did
 19 RECOM tell you where they went?
 20 A. Northbound. They're walking towards
 21 Pockets.
 22 Q. Did they say anything else, give you any
 23 description at all?

26
 1 A. Description of the subjects?
 2 Q. Yes.
 3 A. No. They just -- what they dispatched to us
 4 was the subjects.
 5 Q. You don't know if they were white or black,
 6 or tall or short?
 7 A. No, sir.
 8 Q. Skinny or fat?
 9 A. No.
 10 Q. So you had no idea what they looked like?
 11 A. No.
 12 Q. All you knew was, there was more than one
 13 individual; isn't that correct?
 14 A. Yes.
 15 Q. I'm going to go back to something you stated
 16 on direct, when they said -- the dispatch said that
 17 one of the individuals put what they believe was a
 18 pipe in their pants.
 19 A. Yes.
 20 Q. And is it your testimony here today that
 21 when somebody had put a pipe down their pants, you
 22 immediately thought it was a shotgun?
 23 A. I did, yes.

27
 1 Q. So a pipe, in your mind, represented a
 2 shotgun?
 3 A. Well, it could. For example, to some folks'
 4 eyes, it could, yes.
 5 Go ahead. I'm listening. I'm sorry.
 6 Q. You responded to the scene, and you and
 7 Trooper McLaughlin drove up to the intersection. You
 8 saw one individual; is that correct?
 9 A. Yes.
 10 Q. And you didn't see anybody else at that
 11 intersection, did you?
 12 A. No.
 13 Q. And you said that you had a clear view over
 14 to 325 South Dupont; is that correct?
 15 A. Yes.
 16 Q. Could you see the car that was parked in the
 17 driveway?
 18 A. Yes.
 19 Q. Could you see if there was anybody in the
 20 car?
 21 A. No.
 22 Q. But you had a clear view?
 23 A. Yes.

28
 1 Q. But you couldn't tell if there was anybody
 2 in the car?
 3 A. It was dark, and it was raining.
 4 Q. Now, you knew that from RECOM. Did they
 5 tell you the car was parked in the driveway?
 6 A. Yes.
 7 Q. So you knew that car may be involved; is
 8 that correct?
 9 A. Yes.
 10 Q. So as you, Trooper McLaughlin stopped
 11 Mr. Harris on the street, one of you go over to 325
 12 South Dupont?
 13 A. Not at this point, because my main concern
 14 was Mr. Harris.
 15 Q. Well, he's an individual. He's not in a
 16 group. There's nobody else around him.
 17 A. Right. He's walking northbound, as
 18 explained from the dispatch, wearing a knit hat on
 19 his head. And, um, like I said, he had coveralls on.
 20 I thought that's possibly, you know, going to be the
 21 guy with the pipe inside his clothing, so I'm --
 22 Q. I'm sorry?
 23 A. -- so my thoughts were directly on him. My

<p>1 concerns were on him. Hey, let's make sure that</p> <p>2 this -- you know, this is going to be our guy.</p> <p>3 Q. Did dispatch tell you if the people in 325</p> <p>4 were continuing to observe anyone?</p> <p>5 A. At which point?</p> <p>6 Q. After they called up and said a number of</p> <p>7 people got out of the car, put on what appeared to be</p> <p>8 masks, somebody put pipes in their pants, where did</p> <p>9 they say they went?</p> <p>10 A. Northbound --</p> <p>11 Q. Northbound?</p> <p>12 A. -- towards Pockets.</p> <p>13 Q. Did they say they could see them or lost</p> <p>14 sight of them?</p> <p>15 A. Our dispatch, they walked northbound towards</p> <p>16 Pockets, and they lost sight of them at that point.</p> <p>17 Q. But what you're telling us -- and that was</p> <p>18 about five to ten minutes before you arrived on the</p> <p>19 scene?</p> <p>20 A. Yes.</p> <p>21 Q. But what you're telling the Court here today</p> <p>22 is that there was a clear view from 325 to where</p> <p>23 Mr. Harris was; is that correct?</p>	<p>29</p> <p>1 MR. DEELY: May I approach, Your Honor?</p> <p>2 THE COURT: Yes, you may.</p> <p>3 (Demonstration held.)</p> <p>4 BY MR. DEELY:</p> <p>5 Q. This is the front of the house.</p> <p>6 A. Yes. Wherever you're standing, off this</p> <p>7 road or up over here, yes.</p> <p>8 Q. So if there were windows in the front of</p> <p>9 this house, are there some windows?</p> <p>10 A. I don't remember exactly.</p> <p>11 Q. Let me put it this way: If there was a</p> <p>12 window in the front of this house, and they were</p> <p>13 looking at this intersection, would they be able to</p> <p>14 see Mr. Harris?</p> <p>15 A. Yes.</p> <p>16 Q. Unobstructed; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. So he wouldn't be out of their view; is that</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. So he wouldn't have gotten out of their</p> <p>22 view; is that correct?</p> <p>23 A. Yes.</p>
<p>30</p> <p>1 A. To where Mr. Harris was, yes.</p> <p>2 Q. So they wouldn't have lost sight of</p> <p>3 Mr. Harris?</p> <p>4 A. I don't know that.</p> <p>5 Q. Well, you said it was unobstructed, the</p> <p>6 windows in front of the house.</p> <p>7 A. I don't recall if there were.</p> <p>8 Q. You said the view was unobstructed, at 325.</p> <p>9 A. The view from myself to the vehicle was</p> <p>10 unobstructed, yes.</p> <p>11 Q. Could you see the house?</p> <p>12 A. Yes, I could see the house.</p> <p>13 Q. The view was unobstructed to the house;</p> <p>14 correct?</p> <p>15 A. My view to the house was --</p> <p>16 Q. Somebody looking out, their view would be</p> <p>17 unobstructed?</p> <p>18 A. I don't know whether they're looking from in</p> <p>19 the house, so I can't...</p> <p>20 Q. If they're looking out the front of the</p> <p>21 house, I assume the front --</p> <p>22 A. If they're standing on the outside, looking</p> <p>23 across --</p>	<p>32</p> <p>1 Q. So you now pull up next to Mr. Harris. You</p> <p>2 activate your lights; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. What do you say to Mr. Harris?</p> <p>5 A. <u>Well, as I exit my vehicle --</u></p> <p>6 Q. Before you exit the vehicle, did you say</p> <p>7 anything?</p> <p>8 A. <u>I didn't say anything to him.</u></p> <p>9 Q. You pulled up next to him. What did he do?</p> <p>10 A. <u>Like I said, he was standing kind of in</u></p> <p>11 <u>between our vehicles. Our vehicles were closer than</u></p> <p>12 <u>this. There was only a few feet in between our</u></p> <p>13 <u>vehicles, but I immediately exited my vehicle.</u></p> <p>14 Q. Let's back up --</p> <p>15 A. Sure.</p> <p>16 Q. -- please.</p> <p>17 When you drove up, Mr. Harris was standing</p> <p>18 at the intersection?</p> <p>19 A. No, just --</p> <p>20 Q. Just north?</p> <p>21 A. -- north.</p> <p>22 Q. A few feet. You pulled up next to him and</p> <p>23 Corporal McLaughlin drove on the opposite side?</p>

<p>1 A. He's facing me. So I advised him to turn 2 around. So he's looking, like, this way. 3 Q. Towards Trooper McLaughlin's car? 4 A. Well, this is McLaughlin's car over here. 5 So he's looking, I guess it would be south. 6 Q. So you said, "Turn around." 7 A. Yes. 8 Q. Did he turn around? 9 A. Yes. 10 Q. Did you tell him to stop, don't move? 11 A. No. 12 Q. You just got out of your car and said, turn 13 around? 14 A. I said, turn around. And he had turned 15 around. And when he turned around, I asked him if he 16 had any weapons on him. Before I ever patted him 17 down, he said he had a shotgun on him. 18 Q. So did you ask him his name? 19 A. At that point, I wasn't concerned about his 20 name. I wanted to make sure he didn't have a weapon 21 on him. 22 Q. So the very first words out of your mouth 23 when you got out --</p>	<p>37 1 Q. Corporal Slover, do you have your police 2 report? 3 A. Yes, it's up -- may I approach? 4 MR. DEELY: May he get it, Your Honor? 5 THE COURT: Yes. 6 (Pause.) 7 (Corp. Slover retrieves report.) 8 BY MR. DEELY: 9 Q. If you would look at the third paragraph of 10 your investigative narrative. 11 A. (Corp. Slover complies.) 12 Sure. 13 Q. Did you say that one of the first things you 14 said was, you advised the defendant to remove his 15 hands from his pockets? 16 A. Yes. 17 Q. So you didn't only say "turn around." 18 A. Well, no, I guess I didn't only say "turn 19 around," no. 20 Q. I'll go through the specifics with you 21 again, okay? 22 You pulled up next to him? 23 A. Mm-hmm.</p>
<p>38 1 A. Absolutely. 2 THE COURT: Wait a minute. Let each other 3 finish. 4 MR. DEELY: I understand. 5 THE COURT: Answer when he's done asking the 6 question. 7 BY MR. DEELY: 8 Q. You got out of your car and immediately 9 said, turn around? 10 A. Yes. 11 Q. And he complied? 12 A. Yes. 13 Q. And the next thing you did was, you started 14 to search him? 15 A. I asked him if he had any weapons on him. 16 Q. And he said, "Yes, I have a shotgun"? 17 A. Yes. 18 Q. That's your testimony here today? 19 A. Yes. 20 MR. DEELY: May I have a moment, Your Honor? 21 THE COURT: Yes. 22 (Pause.) 23 BY MR. DEELY:</p>	<p>40 1 Q. You got out of your car? 2 A. Mm-hmm. 3 Q. The first words out of your mouth were what? 4 A. I advised him to remove his hands from his 5 pockets. 6 Q. Did he comply? 7 A. Yes. 8 Q. So his hands were in plain view at that 9 time? 10 A. At that time, yes. 11 Q. And then you told him to turn around? 12 A. Yes. 13 Q. He turned around? 14 A. Yes. 15 Q. And without asking any further questions as 16 to what he was doing or why he was there, you began 17 to search him immediately? 18 A. Yes. 19 Q. Up to that point, up to that point, had you 20 seen any suspicious activity, other than the fact 21 that he had a knit cap and he was walking on the side 22 of the highway? 23 A. No.</p>

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<p>1 Q. You made a statement on direct that walking 2 on the side of the highway was not a normal place for 3 pedestrians; is that correct? 4 A. Correct. 5 Q. Where would pedestrians normally walk in 6 that section of the highway if they were heading 7 northbound? 8 A. Well, they would be more over towards the -- 9 I guess right, or west. I mean, they wouldn't be 10 walking right on the roadway. 11 Q. He wasn't on the roadway itself. He was on 12 the shoulder. 13 A. He was walking a foot off the white line. 14 He's two feet from the vehicles going southbound on 15 13. 16 Q. But he was off the shoulder. He was on the 17 shoulder of the road. 18 A. He was on the shoulder. 19 Q. He was in the place where normal pedestrians 20 would walk if they were walking northbound on Route 21 13? 22 A. Not in my opinion. 23 Q. Well, he's on the shoulder of the road.</p>	<p>1 Q. Would you read the sentence to the Court, 2 starting with, "As I began"? 3 A. As I began to pat him down, "D" stated that 4 he had a shotgun inside his clothing. 5 Q. That's different from what you testified to 6 earlier. What you testified to earlier was -- let me 7 finish the question -- 8 A. Go ahead. 9 Q. -- was that you got out of your car, told 10 him to turn around, amended that to, hands are in 11 plain view. Then you told him to turn around, and at 12 that time you began to pat him down. Is that your 13 testimony now? 14 A. I went to pat him down, yes. 15 Q. And as you were patting him down -- as you 16 began to pat him down, he said, "I have a shotgun in 17 my pants"? 18 A. No. As I began -- went to pat him down, as 19 I began, he stated that he had shotgun in his 20 clothing. 21 Q. Well, he's not looking at you, so he doesn't 22 know you're beginning to pat him down. He doesn't 23 know what you're doing behind him.</p>
<p>1 Isn't that where people are supposed to walk? 2 A. Yeah, but he's on the -- a foot off the -- 3 off the solid white line. He's two feet from 4 vehicles traveling at 50 miles an hour southbound. 5 Q. And you found that suspicious? 6 A. I found that that's not where I would walk. 7 Q. Did you find it suspicious? 8 A. No. I mean, that's not suspicious, but 9 that's not what you asked me. 10 Q. So if he was three feet off the side of the 11 road, that would have been okay, in your opinion? 12 A. No, if he was more towards where the asphalt 13 meets the grass area. 14 Q. Now, in that same paragraph, the next 15 sentence says, "As you began to pat him down"; 16 is that correct? 17 A. Yes. 18 Q. It says, "At that time, Mr. Harris advised 19 there was a shotgun in his clothing"? 20 A. Yes. 21 Q. It was not before you began to pat him down, 22 was it? 23 A. Yes.</p>	<p>1 You're behind him at this point; right? Is 2 it your testimony now he's facing away from you, and 3 not knowing what you're doing or what you're going to 4 ask him? 5 He says, "I have a shotgun in my clothes"? 6 A. Yes. I mean, as I explained to you, I 7 always ask people -- and as I did that night -- do 8 you have any weapons on you? And as I began to pat 9 him down, he stated he had a shotgun. 10 Q. What does "begin" mean? You touched him? 11 A. No, it doesn't. 12 Q. What does it mean? 13 A. As I began, as I went to, same thing. I 14 just used a different word there, as I began. 15 Q. So you walked up? 16 A. If I was touching him, that would be during 17 a patdown. 18 Q. So you walked up to the individual, said, 19 "Take your hands out of your pockets." His hands are 20 in plain view? 21 A. Correct. 22 Q. Okay. Did you tell him to do anything with 23 his hands after he took them out of his pocket?</p>

<p>1 A. I don't recall.</p> <p>2 Q. But they're in plain view at that point?</p> <p>3 A. They're in plain view.</p> <p>4 Q. Trooper McLaughlin is in the car next to</p> <p>5 you?</p> <p>6 A. Yes.</p> <p>7 Q. And he's watching what you're doing?</p> <p>8 A. I would assume.</p> <p>9 Q. Hope so?</p> <p>10 A. Right. Exactly.</p> <p>11 Q. The procedure would be for him to be</p> <p>12 watching; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. Did he get out of his car?</p> <p>15 A. I don't recall at that point, because my</p> <p>16 attention was directed at Mr. Harris.</p> <p>17 Q. Now, Mr. Harris is standing there with his</p> <p>18 hands out?</p> <p>19 A. Yes.</p> <p>20 Q. You had him turn around. You haven't asked</p> <p>21 him his name or anything at this point?</p> <p>22 A. Correct.</p> <p>23 Q. Is that correct?</p>	<p>45</p> <p>1 follows all your orders. You've seen no suspicious</p> <p>2 activity from this defendant. You don't know if he</p> <p>3 matches the description that was called in. Are all</p> <p>4 these things true up to this point?</p> <p>5 A. Other than matching the description, the</p> <p>6 knit hat on his head.</p> <p>7 Q. And you immediately begin to pat him down?</p> <p>8 A. Correct.</p> <p>9 MR. DEELY: No further questions,</p> <p>10 Your Honor.</p> <p>11 -----</p> <p>12 REDIRECT EXAMINATION</p> <p>13 -----</p> <p>14 BY MR. WALTHER:</p> <p>15 Q. Defense counsel asked you about whether the</p> <p>16 occupant of 325 South Dupont Highway had an</p> <p>17 unobstructed view from his front windows. Do you</p> <p>18 recall those questions?</p> <p>19 A. As he asked, unobstructed view to where I</p> <p>20 stopped Mr. Harris.</p> <p>21 Q. Okay. From the front of the --</p> <p>22 A. From the front of the house, if the house</p> <p>23 had windows in the front, which I don't know.</p>
<p>46</p> <p>1 A. Yes.</p> <p>2 Q. And you immediately begin to search him?</p> <p>3 A. Yes.</p> <p>4 Q. Even though your report was -- there were</p> <p>5 several people. You got one individual, who is</p> <p>6 walking innocently at this point. You see no</p> <p>7 suspicious activity; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. He complied with all your commands; is that</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And even the fact he complied with all the</p> <p>13 commands, you made no attempt to find out what he was</p> <p>14 doing in the area?</p> <p>15 A. At that point, my attention was solely on if</p> <p>16 he had a weapon, okay? I wanted to go home. It's</p> <p>17 at night. So I want to make sure he doesn't have a</p> <p>18 weapon on him. I don't want this weapon to come out</p> <p>19 and fire at me and...</p> <p>20 Q. I want to re-set the scene.</p> <p>21 A. Sure.</p> <p>22 Q. Two police officers, lights going, two</p> <p>23 police officers with guns, defendant is compliant,</p>	<p>48</p> <p>1 Q. Do you have any idea whatsoever, prior to</p> <p>2 the stop, where the location of the reporting person</p> <p>3 was at the time that he was reporting this</p> <p>4 information?</p> <p>5 A. Other than at 325 South Dupont, I don't</p> <p>6 know. That's what I explained to the defense</p> <p>7 counsel.</p> <p>8 Q. Right. So if he was on the front step -- is</p> <p>9 there a driveway or what?</p> <p>10 A. Exactly.</p> <p>11 Q. As you approached the vehicle, as you went</p> <p>12 out, what were the first words you said, as you</p> <p>13 recall today, to the defendant?</p> <p>14 A. As I recall --</p> <p>15 Q. Uh-huh.</p> <p>16 A. -- I had stated -- um, well, in my report,</p> <p>17 which I stated that night, because I wrote this</p> <p>18 report. Back then was, "Remove your hands from your</p> <p>19 pockets." He had his hands in his pockets, and I</p> <p>20 stated to him, "Do you have any weapons on you -- I'm</p> <p>21 sorry. I asked him to turn around, and stated, did</p> <p>22 he have any weapons on you. And, um, at which time,</p> <p>23 I went to pat him down. He stated that he had a</p>

<p>1 shotgun inside his clothing.</p> <p>2 Q. Before you laid a hand on him, did he tell</p> <p>3 you he had a shotgun?</p> <p>4 A. Yes.</p> <p>5 MR. WALTHER: Nothing further -- excuse me.</p> <p>6 May I ask one more question?</p> <p>7 THE COURT: Yes.</p> <p>8 BY MR. WALTHER:</p> <p>9 Q. The information that you received from the</p> <p>10 RECOM dispatcher with regard to this reporting</p> <p>11 person, was that person ultimately interviewed and</p> <p>12 cooperated in the investigation?</p> <p>13 A. Yes.</p> <p>14 Q. It wasn't an anonymous call, was it?</p> <p>15 A. No.</p> <p>16 MR. WALTHER: Nothing further.</p> <p>17 -----</p> <p>18 RECROSS-EXAMINATION</p> <p>19 -----</p> <p>20 BY MR. DEELY:</p> <p>21 Q. Officer, you just stated on redirect that</p> <p>22 you didn't know where the people reporting out of 325</p> <p>23 were as they were calling into the police; is that</p>	<p>1 A. No.</p> <p>2 Q. You got out of the car and said, "Take your</p> <p>3 hands out of your pockets"?</p> <p>4 A. Yes.</p> <p>5 Q. And then you said, "Turn around"?</p> <p>6 A. Yes.</p> <p>7 Q. And he complied in both cases?</p> <p>8 A. Yes.</p> <p>9 Q. At that time, you believed that he was a</p> <p>10 suspect in a crime; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. And at that time, knowing he was a suspect</p> <p>13 in a crime, and that he was not free to leave, did</p> <p>14 you read him his Miranda rights --</p> <p>15 A. No.</p> <p>16 Q. -- but secured him, a question that may well</p> <p>17 incriminate him in that crime that you were</p> <p>18 investigating; is that correct?</p> <p>19 A. Yes, I asked him a question.</p> <p>20 MR. DEELY: No further questions,</p> <p>21 Your Honor.</p> <p>22 MR. WALTHER: Nothing further, Your Honor.</p> <p>23 THE COURT: You may step down.</p>
<p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. But we do know they said they watched him go</p> <p>4 in a certain direction?</p> <p>5 A. Correct.</p> <p>6 Q. And the car was in the driveway toward the</p> <p>7 front of the house?</p> <p>8 A. Correct.</p> <p>9 Q. So to see what direction they went, they</p> <p>10 head northbound, a place where they could be looking,</p> <p>11 northbound; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. So we don't know precisely where they</p> <p>14 were standing, but we know generally what view they</p> <p>15 had; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. When you stopped Mr. Harris, you stated that</p> <p>18 you pulled your car up beside him, and Trooper</p> <p>19 McLaughlin pulled up his car. At that point, he was</p> <p>20 not free to leave; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Did you tell him to stop or halt or anything</p> <p>23 to that effect?</p>	<p>1 CORP. SLOVER: Thank you, Your Honor.</p> <p>2 (Corp. Slover excused.)</p> <p>3 MR. WALTHER: May I speak to counsel for</p> <p>4 just a second?</p> <p>5 THE COURT: Yes.</p> <p>6 (Counsel conferring.)</p> <p>7 MR. WALTHER: State calls Detective Daniel</p> <p>8 Bramble.</p> <p>9 -----</p> <p>10 DET. DANIEL I. BRAMBLE, having been called</p> <p>11 on the part and behalf of the State, having been duly</p> <p>12 sworn according to law, was examined and testified as</p> <p>13 follows:</p> <p>14 -----</p> <p>15 MR. DEELY: Excuse us, Your Honor.</p> <p>16 (Counsel conferring.)</p> <p>17 MR. WALTHER: We are not going to be able to</p> <p>18 agree on this. I intend to offer into evidence the</p> <p>19 9-1-1 call and dispatch. I believe it's relevant for</p> <p>20 purposes with regard to this, not -- well, first of</p> <p>21 all, it's relevant with regard to the issue of</p> <p>22 reasonable and articulable suspicion, because it has</p> <p>23 what's dispatched. But in addition to that, it also</p>

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1 has the two individuals from 325 South Dupont Highway
2 who actually called in it, stayed on the line. And I
3 believe that is relevant as to not only that they did
4 that, they called up a second time to establish that,
5 one, they're not anonymous callers, and this
6 continues between the anonymous caller and the one
7 citizen.

8 MR. DEELY: We will stipulate whether
9 they're anonymous. Your Honor.

10 MR. WALTHER: I'll make a record of this.
11 The difference between anonymous at this point and a
12 citizen who, technically, there's a crime being
13 committed on his property, criminal trespass, who
14 makes a call, and cooperating with the police, that
15 goes to credibility, reliability, which I believe is
16 an issue.

17 MR. DEELY: Your Honor, we will stipulate
18 that the call was not anonymous.

19 My problem with the playing of the 9-1-1
20 tape is the reasonableness of a stop-and-search
21 seizure is based upon the information that the
22 officer has at the time of such search and seizure,
23 not information that may be available at a later

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1 date. Therefore, there's information on the tape
2 that may well go toward what the officer -- after the
3 fact, whether the officer had probable cause or
4 reasonable suspicion. But the fact of the matter is
5 that the officer has testified as to what he knew at
6 the time, and that's pertinent to the issue, what did
7 he know at the time that he made the stop and seizure
8 and conducted a search or didn't conduct a search,
9 not what evidence was found after the fact that may
10 buttress that. So, if somebody works on a hunch,
11 goes back and finds out a crime was committed, you
12 can't arrest people based on a hunch.

13 So my objection to the tape is not that it's
14 inaccurate or that it's anonymous. My objection to
15 the tape is, it gives far more information that the
16 officer didn't have at the time. And the officer now
17 testified as to what he knew at the time of the stop
18 and the arrest.

19 THE COURT: All right. Let me just make
20 sure that I'm clear on your position, though. You
21 are not intending to argue at any point in time that
22 the officer was not entitled to rely upon, without
23 equivocation, the information that he received from

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1 RECOM, with respect to the observations that were
2 communicated from the residence of 325 South Dupont
3 on the basis that they were not anonymous, a
4 proven-reliable tipster from --

5 MR. DEELY: Name, address, all that
6 pertinent information, and we're available for
7 further investigation as to what he testified.

8 What I'm arguing here is that there's
9 information that was given to RECOM that, evidently,
10 was not given to the officer. And the officer has
11 stated what information he had and what information
12 that he used in order to make the stop and/or
13 seizure, and/or search and/or arrest.

14 The fact that there was more information
15 available that he didn't have is immaterial for
16 purposes of this hearing.

17 That's my argument, sir.

18 THE COURT: All right.

19 MR. WALTHER: It seems to me, Your Honor,
20 the State has the burden. And the State certainly
21 can present its case in a manner, one, that presents
22 its best case; and two, presents a picture to the
23 Court, Your Honor, since you're the fact finder in

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1 this case with regard to the totality of the
2 circumstances surrounding the stop.

3 The tape is being offered for probable
4 cause. That is the information that Officer Slover
5 had in his possession, in his mind, plus any
6 reasonable inferences that he could draw from that,
7 including public-safety reasons. But in addition to
8 that, the State can also present it because, in the
9 best way possible, um, that the information is
10 reliable and credible on the issue. It clearly makes
11 a distinction between whether or not it's an
12 anonymous call, or a citizen complaint, a crime in
13 the progress. And I think that I should be permitted
14 to do that the best way I can. And the State
15 suggests that the best way to do that is actually
16 listen to the person making the call.

17 MR. DEELY: I don't mean to beat a dead
18 horse. I think it's exactly wrong. We have the
19 officer who conducted the stop and the arrest present
20 in court. It's what was in his mind at the time of
21 that stop and arrest, whether this is -- it was a
22 reasonable, probable cause or reasonable suspicion
23 existed. It's not what was on tape and told to RECOM

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1 grounds to suspect a crime is committing, has
 2 committed, or about to commit a crime. We can
 3 concede based on the call that it may be reasonable
 4 to think he may be involved with this group of
 5 people, whoever it was based on, the time of night
 6 and totality of the circumstances, but it goes
 7 further to say that. And he may demand the person's
 8 name, address, business address and destination. What
 9 we have in this case is none of those things were
 10 done by this officer, zero. He stopped him and
 11 searched him.

12 Would it have been reasonable to say: "Who
 13 are you?"

14 "Bryant Harris."

15 "Do you have identification?"

16 "Yes."

17 "Where are you headed, Mr. Harris?"

18 He could have said, "I'm on my way to
 19 Pockets to have a drink."

20 There are lots of reasons why a pedestrian
 21 may be in that area at that time of night. The area
 22 didn't -- he never saw pedestrians walk. A person
 23 could be walking to that commercial establishment.

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1 The officer failed to follow 1902 is very specific.
 2 1902 has been ruled in Delaware Supreme Court to be
 3 the same as a Terry stop, but Delaware added
 4 additional protections for the defendant.

5 In addition, Your Honor, the information
 6 that the officer had at the time of the stop was that
 7 there were multiple subjects. He only saw one. The
 8 person was on the highway, not where they had said
 9 that the subjects had left. The officer had a hunch
 10 that there might be a weapon. But he certainly had
 11 no articulable suspicion based on any actions by the
 12 defendant or what the defendant was doing to suspect
 13 anything. It was a cold, rainy, night -- correction,
 14 it was a rainy night. The officer doesn't remember
 15 what the weather was. It was damp and dreary. He
 16 had a knit cap on his head. That's it. Beyond that,
 17 once the client was in custody, once Mr. Harris was
 18 in custody, the officer began an interrogation
 19 without reading Miranda rights. The officer has all
 20 control at that time. What was the purpose of
 21 asking, do you have a weapon? He can search the
 22 person and find the weapon if he has reasonable
 23 articulable suspicion, and can point to identifiable

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1 facts in that situation, that leads him, a reasonable
 2 officer, to believe this person may be armed. The
 3 specific person may be armed. It must be more than a
 4 hunch. The officer testified, when he heard about a
 5 pipe, he got a hunch it might -- he didn't use the
 6 word hunch. He had a hunch it might be a shotgun.
 7 That's a hunch. There's no actions. He didn't say
 8 he saw the client limping as he was walking. He saw
 9 him reach for a weapon. He saw him do no furtive
 10 actions. He saw him do nothing but walking down the
 11 street. He stopped him, didn't ask any questions.
 12 He orders him to turn around and began a search.
 13 That doesn't comport with either Terry or 1902, under
 14 Delaware law. There was made a big deal about the
 15 area, and it's a high-crime area. I haven't been in
 16 a case where we didn't spend a lot of time on that.
 17 Obviously, a high-crime area is purely subjective.
 18 And the fact that it's a high-crime area, using that
 19 logic, any person in the parking lot at Pockets could
 20 be arrested and stopped if they got a call somebody
 21 was doing something at Pockets parking lot or had
 22 been. There's just no facts in this case, even
 23 though the officer had a right to stop him, the

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1 officer had a right to talk to him. The officer had
 2 a reasonable suspicion at that point. He can't
 3 conduct a search without going beyond that initial
 4 reasonable suspicion. And Delaware codified that he
 5 must ask him specific questions outlining what the
 6 person is doing. As I said, he didn't give
 7 Mr. Harris an opportunity to explain anything. He
 8 sees him. He searched him. He questioned him
 9 without reading him his rights, based on a hunch,
 10 with no actions on Mr. Harris's part to indicate that
 11 he may, in fact, be armed. And he wasn't in a group
 12 of people, which is the only information that the
 13 officer had at the time that he got the call.

14 MR. WALTHER: The defense seems to imply
 15 that the fact that the officer did not have a
 16 two-hour detention and have questions is fatal to the
 17 issue of reasonable articulable suspicion. And it's
 18 true that the -- that the State legislature has
 19 codified it, but the Supreme Court of Delaware, in
 20 Jones and Flannery and subsequent cases, has said
 21 that that Delaware two-hour detention statute, as
 22 read in its entirety, means a reasonable and
 23 articulable suspicion. So, I think, the argument

that he did not ask those questions is not fatal, as long as there's a reasonable articulable suspicion prior to the Terry type of patdown, nor is it fatal to the State's case that before he patted him down, he asked him if he had a weapon, and that is uncontroverted. The defendant responded, yes, he did have a weapon. He was patted down and the weapon was found. I believe all those factors are sufficient for a reasonable articulable suspicion, keeping in mind that the burden the State has, keeping in mind that reasonable articulable suspicion is less than probable cause.

MR. DEELY: Your Honor, very briefly.

If the search is illegal for a weapon, Terry is very specific; you must believe there's a weapon, and you must have articulable facts to state that there's a weapon. The officer stated none, except that he had a hunch. Terry requires a specific fact when he got the call. He heard about a pipe, thought it might be a shotgun. Nothing, when he stopped the individual, gave him any indication that the individual was armed. He did not ask him any questions. He didn't do anything else for the State

to attempt to bootstrap, after an illegal search or an illegal search is being conducted, after an illegal questioning is being conducted; to bootstrap that as a consent to search just doesn't fly.

Thank you.

MR. WALTHER: What the defense calls a hunch is what the State refers to as reasonable inferences from objective facts based upon the training and experience of the officer.

THE COURT: All right.

First, the Court reserved its decision with respect to the tape that was marked as State's Exhibit 2, so that I could hear the tape and understand more fully what was on the tape and understand the concerns addressed by defense counsel.

Before we began listening to the tape, the defense acknowledged that this is not a tipster case, or at least some willingness to stipulate to that; we were not willing with an anonymous tip, and, therefore, unreliable information.

I heard Mr. Walther just say, well, we appreciate the stipulation, but we ought to be allowed to demonstrate to you, with the evidence, we

have the reliability of the information that was being communicated to RECOM and, in turn, communicated to the officer. I am satisfied that this is not a case that should be analyzed under the anonymous-tip line of cases, that the information received by RECOM was reliable information, ongoing information, as events were unfolding. So I don't believe that those cases are instructive.

Having said that, there are references in the tape to descriptions of the individuals involved that did not get communicated to Corporal Slover, particularly the race of the individuals, and one reference to black or dark clothing. That was not communicated to Corporal Slover. And, therefore, the Court is not going to consider that information in the total mix of information available to Corporal Slover that would have enabled him to form a reasonable suspicion that a crime has been committed or about to be committed. So that is my ruling with respect to the admissibility of the tape. Part of it is admissible, part of it is not, and the Court has not considered that portion.

The standard of proof is preponderance of

the evidence. The State has the burden to carry that standard of proof. And it's against that standard the Court must weigh the evidence. There are two steps. One is the initial approach, stop and detention, if you will. The second is the search. Counsel has referred to 1902. That certainly addresses the Terry detention, or the Terry stop.

1903 is the state that addresses the subsequent search that was done. I am not prepared to rule, as a matter of law, that a 1903 search cannot occur until the 1902 questions are asked. I can envision any number of circumstances where that would simply be unrealistic, given the dynamics of a particular police encounter with a suspect. The purpose of the Terry search, codified in 1903, is to preserve the safety of the officer and any individuals who may be in the area of the encounter, and requiring officers to recite questions before they search a suspect, in certain instances, is not a reasonable requirement. The standard for both a stop and a search is the same, and that is a reasonable ground to suspect, or, in federal jurisprudence, reasonable suspicion which, I believe, is the same

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1 Q. Uh-hmm.

2 A. Never walked to the store with Paul. I never
3 walked to Pockets with Paul.

4 Q. Okay. Where did you go when you got out of the
5 car?

6 A. Up the other end and around. I never touched
7 the highway until I was walking back.

8 Q. Okay. When you say "up the other end and
9 around," I'm going to refer you to State's Exhibit

10 No. 4, are you talking about going up this way? Towards
11 the back?

12 A. Yes.

13 Q. And the reason you went up that way is because
14 that's a secluded, dark area and you didn't want anybody
15 to see you, right?

16 A. Yes.

17 Q. And where did Dekelvin Townsend go?

18 A. All three of us walked together except for
19 Paul.

20 Q. All right. What route did Paul go?

21 A. Highway.

22 Q. All right. So he came up the highway, went in,
23 checked it out. You guys went this back way, okay?

26

1 A. Yes.

2 Q. And then at some point you come over to this
3 area over here on State's Exhibit No. 4, which appears
4 to be on the DuPont Highway side of Pockets, correct?

5 A. Yes.

6 Q. You're not out on the highway?

7 A. No, I'm not.

8 Q. Because you don't want anybody to see you,
9 right?

10 A. Right.

11 Q. I mean, you're about to commit a robbery,
12 right?

13 A. Yes.

14 Q. All right. And, now, the reason you wanted
15 Nocho to go in is because you wanted to know what was
16 going on in there before you went in, correct?

17 A. Yes.

18 Q. You wanted to know how many people were in
19 there, correct?

20 A. Yes.

21 Q. How many people were working there, correct?

22 A. Yes.

23 Q. All right. And he comes back, and apparently

27

1 you come from the back of Pockets, this area over here,
2 the grassy area with the trees, and you meet up with
3 him, right?

4 A. Yes, I was in the woods, not all the way in,
5 the end of the woods.

6 Q. All right. And he says to you there's some
7 people in there, right?

8 A. Two clerks.

9 Q. That's it, just two clerks?

10 A. That's it.

11 Q. That's -- I'm a little confused. All right?

12 You had already planned to commit a robbery with a
13 weapon, and you decided not to commit the robbery
14 because there were two clerks there?

15 A. No.

16 Q. Is that what you're saying?

17 A. I decided not to commit the robbery because we
18 all were endangering each other's lives and individuals
19 that would also be in there.

20 Q. Well, how is your life in danger when you have
21 a loaded shotgun?

22 A. How was my life in danger?

23 Q. You were the one with the gun, right?

28

1 A. Yeah.

2 Q. Well, they weren't armed? Your coconspirators
3 weren't armed, were they?

4 A. I was pretty -- I was putting them in danger as
5 well as myself.

6 Q. The only one you were putting in danger was
7 Marcus Comer, correct, your brother?

8 A. Everybody.

9 Q. All right. Well, they -- the plan wasn't for
10 Dekelvin Townsend and Paul Nocho to go into the store
11 with you, correct?

12 A. It was not.

13 Q. So, when Paul Nocho -- when you confront Paul
14 Nocho after he comes out and he tells you about there
15 being two clerks, all right, you, according to your
16 testimony today, decided, wow, this is dangerous, I
17 don't want my brother and these people to get hurt in
18 this robbery, right?

19 A. That and other thoughts that I had.

20 Q. All right. But one of you thought of public
21 safety, correct?

22 A. Public -- safety of myself and my brother and
23 friends.

1 Q. Did you care at all about the clerks?

2 A. The clerks? That's why I didn't go in there.

3 Q. All right. So let me see if I understand this,
4 the reason that you throw in the towel and decide not to
5 do this is because you were afraid that you, your
6 brother, your coconspirators, and possibly the clerks
7 could get hurt. Is that what you're saying today?

8 A. That, and there's a better life than robbing
9 people. I thought about myself for once.

10 Q. But in any event, okay, you decide that's it,
11 we're not going to do this robbery?

12 A. Yes, sir.

13 Q. Partially because you didn't want anybody to
14 get hurt, right?

15 A. Because there's more things out there to do
16 than rob people. I have children.

17 Q. Well, that's understandable.

18 A. I don't want my kids to see me locked up in
19 jail from my stupidity that I did.

20 Q. Can you explain that, if you're so concerned
21 about the safety -- your safety, all right, and the
22 future of your children and the safety of your
23 coconspirators and everything, why you in the first

1 house and tell my brother to take it back where he got
2 it from.

3 Q. Well, you had an opportunity to get a deadly
4 weapon out of your hand, out of circulation, that could
5 never be used again in a robbery, all right, and you did
6 not take the opportunity to do that, correct?

7 A. Why should I throw a loaded shotgun in the
8 woods so somebody else can find it and harm another
9 person?

10 Q. And use it, right?

11 A. Right.

12 Q. Now, apparently when Paul Nocho meets you in
13 the grassy area south of Pockets, all right, you're the
14 one who calls it all off, correct?

15 A. Yes, I did.

16 Q. And did you get any argument at all from
17 anybody?

18 A. No, I didn't.

19 Q. Everybody followed your directions, according
20 to you, correct?

21 A. Excuse me. Marcus said, Okay. That's what it
22 is.

23 Q. And with did Dekelvin Townsend say?

1 place decided to take a loaded shotgun, put it down your
2 pants, and walk towards Pockets Liquor store with the
3 intent to commit an armed robbery?

4 A. Sure. The moment all of us planned it, but in
5 the same token, all planned it, it was already in my
6 conscience not to do it. I just got out of jail
7 February, the last day of January of 2003 -- 2002,
8 excuse me.

9 Q. So as you're hiding in the bushes and the trees
10 by Pockets, you have this epiphany, right, I'm going to
11 change my life, right?

12 A. Yes.

13 Q. And may I assume that when you had this
14 epiphany, you finally saw the light, all right, that
15 you're going to change your life. You took that shotgun
16 out of your pants, and you just threw it into the woods
17 and said, That's it. I'm never going to rob anybody
18 else again. That's what you did, right?

19 A. I didn't throw a shotgun into the woods.

20 Q. Oh, I thought you had this epiphany where you
21 were going to change your life?

22 A. I'm not just going to throw the shotgun into
23 the woods. I'm going to take the shotgun back to the

1 A. He didn't say nothing. He followed along -- he
2 followed Marcus across the highway.

3 Q. Now, is it your testimony that all four of you
4 were there in the grassy area when you called it off?

5 A. Paul Nocho was walking to the car. Myself,
6 Dekelvin, and Marcus Comer was behind the store in the
7 woods.

8 Q. All right. Is it your testimony that when you
9 told Paul Nocho that it was off that the other two were
10 not around?

11 A. I never told Paul anything. When he told me
12 there was two clerks in the store, he just kept on
13 walking.

14 Q. Okay.

15 A. Then I turnt to my brother and his friend and
16 told them what I told them.

17 Q. Well, how far away from Paul Nocho were they
18 when you told them that?

19 A. Paul was about 20, 30 feet away from me.

20 Q. Walking back towards the getaway car?

21 A. Yep. Yes.

22 Q. Well, if it was all over, why didn't you tell
23 Paul Nocho?

33

1 A. **Wasn't going to holler his name out.**

2 Q. But you had an opportunity, you were right
3 there with him, right?

4 A. **Sure, I was.**

5 Q. Instead, you didn't tell him that the -- the
6 robbery was off, you let him walk back to the getaway
7 car, correct?

8 A. **Yes, I did. I wasn't going to be in a rush to**
9 **tell him because we didn't go -- none of us did go into**
10 **the store.**

11 Q. But isn't it true that you made the decision
12 right there, all right, right here on State's Exhibit
13 No. 4, all right, where you met Paul Nocho? All right.
14 You had this -- the light went off in your head, and you
15 decided that's it, we're not going to do it?

16 A. **Right.**

17 MR. DEELY: Your Honor, I believe this is --
18 this has been asked and answered.

19 MR. WALTHER: Your Honor, it's foundation for
20 my next question.

21 THE COURT: Overruled, a slightly different
22 question.

23 BY MR. WALTHER:

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1 Q. All right. And at that very point, all right,
2 you let Paul Nocho, your coconspirator, walk away,
3 correct?

4 A. **Yes, I did.**

5 MR. DEELY: Your Honor, it's mischaracterizing
6 the testimony.

7 THE WITNESS: Once --

8 THE COURT: You have to wait. Mr. Deely?

9 MR. DEELY: Your Honor, Mr. Walther's
10 mischaracterizing the testimony. The testimony was that
11 Nocho came up, said there were two clerks, and he
12 continued walking toward the car. It was as he -- he
13 said he watched him walk away partway. Then he turned
14 to the other two conspirators and made his statement.
15 That's not what Mr. Walther is saying.

16 THE COURT: Mr. Walther, any response?

17 MR. WALTHER: Your Honor, I'll just move on.

18 THE COURT: Well, I do want you to address his
19 claim that you've misrepresented the testimony.

20 MR. WALTHER: Well, my position is if I did, in
21 fact, misrepresent the testimony, he was there. He
22 could correct me.

23 THE COURT: Well, I'll just say the attorneys

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1 shall, of course, use their best efforts to recite the
2 testimony as best that they can remember. It will be my
3 final decision, final analysis, what the testimony
4 actually was. You may continue.

5 MR. WALTHER: Thank you, Your Honor.

6 BY MR. WALTHER:

7 Q. Now, at any time when you were walking towards
8 Pockets with the intent to commit the crime of robbery
9 in the first degree, did you have the gun out?

10 A. **No, I did not.**

11 Q. I'm sorry?

12 A. **No, I did not.**

13 Q. You always kept it down in your pants?

14 A. **Yes, I did.**

15 Q. You never took it out?

16 A. **No, I didn't.**

17 Q. Even before you decided not to do it?

18 A. **Never took it out.**

19 Q. Now, it's your testimony that once you called
20 it all off, Dekelvin Townsend and Marcus Comer crossed
21 over the southbound lanes and the northbound lanes and
22 then walked towards Llangollen Boulevard, correct?

23 A. **Yes.**

36

1 Q. Now, how long after that did the police respond
2 and stop you?

3 A. **Well, as I proceed walking, I'd said about four**
4 **minutes.**

5 Q. About four minutes?

6 A. **Yeah.**

7 Q. All right.

8 A. **I was walking slow.**

9 Q. All right. So it took you four minutes to walk
10 roughly from this area right here, which Slover
11 testified was about 150 feet, to the corner?

12 A. **Yes.**

13 Q. All right. That's about right?

14 A. **After I watched my brothers cross the street, I**
15 **didn't proceed walking -- once they got across the**
16 **street, that's when I started walking. They had to wait**
17 **for traffic to cross.**

18 Q. Well, you're standing here with a loaded
19 shotgun in your pants and a ski mask with the eyes cut
20 out?

21 A. **Nobody could see the eyes. It was rolled up**
22 **like a regular hat.**

23 Q. Okay. And you took the time to watch your

1 brother and Dekevin Townsend cross over?

2 A. Yes, I did.

3 Q. And is that because you were concerned about
4 them getting hit by a car?

5 A. It wasn't that. I wanted to wait until they
6 crossed the street.

7 Q. Because you were concerned about their --

8 A. I wanted to wait until they crossed the street.

9 Q. Why?

10 A. And then I started walking.

11 Q. Why did you want to wait until they crossed the
12 street?

13 A. Because that was my decision that I wanted to
14 make.

15 Q. Why?

16 A. That was my decision that I wanted to make.

17 Q. Why?

18 A. That was my decision that I wanted to make.

19 Q. No particular reason, then, you just made that
20 decision?

21 A. No, I just watched them walk across the street
22 and then proceeded to my destination.

23 Q. Were you the least bit concerned that you'd be

1 A. Yes, I did hear him say that.

2 Q. And is it your position that he was wrong?

3 A. Yes, he was.

4 Q. Okay. You're not suggesting that he was lying
5 about that point, are you?

6 A. He was telling false statements.

7 Q. Then you were suggesting that he was lying,
8 right?

9 A. Yes.

10 Q. He wasn't simply wrong, he's a liar. Is that
11 what you're saying?

12 MR. DEELY: Objection, Your Honor.

13 THE COURT: On what grounds are you objecting?

14 MR. DEELY: It's attempting to characterize
15 what the witness is saying. The witness said what he
16 said. He said the statement was wrong. Now he's going
17 into characterizations of that statement. He doesn't
18 know why Corporal Slover said what he said. He just
19 knows what was said, and he disagrees with it.

20 THE COURT: Mr. Walther?

21 MR. WALTHER: No, he said he was lying, Your
22 Honor.

23 THE COURT: I will overrule the objection, and

1 walking southbound on a busy highway with a shotgun in
2 your pants?

3 A. Nobody could see the shotgun.

4 Q. Were you concerned at all that the police might
5 drive by and see you walking on the street without a
6 light, stop you, and find you with a shotgun?

7 A. Pedestrians walk that way all the time.

8 There's a housing department over there.

9 Q. So the answer is you weren't concerned about
10 that, correct?

11 A. Yeah, I was concerned. I was on my way back to
12 the car.

13 Q. It's your testimony it took you about four
14 minutes to walk about 100 feet?

15 A. After I watched my brothers cross the street --
16 before they crossed, I watched the cars before, they
17 wouldn't get hit before that.

18 Q. And that's when Police Officer Slover stopped
19 you, correct?

20 A. Yes, he did.

21 Q. Now, you heard him testify that at the time --
22 right before he stopped you, you were walking back
23 towards Pockets, correct?

1 I'll give the way the responses are phrased such weight
2 as I think appropriate.

3 MR. WALTHER: Thank you, Your Honor.

4 BY MR. WALTHER:

5 Q. Would you agree with me, Mr. Harris, that of
6 everyone who has testified in this courtroom on the
7 issue of whether or not you were walking away from
8 Pockets or towards Pockets you have the most to lose as
9 a result of that?

10 A. I was walking away.

11 Q. That's not my question. My question was, with
12 regard to everyone who has testified on this issue, that
13 you, more than anyone else, have more to lose on the
14 issue of whether or not you were walking towards Pockets
15 or away from Pockets?

16 A. Yes, I do have a lot to lose. I was walking
17 away from the area back to the car.

18 Q. Now, when the police stopped you, all right,
19 you had already made this decision to end -- at least
20 according to you, to end the robbery, that's it, you're
21 not going to do it, correct?

22 A. Yes.

23 Q. Isn't it true that you knew that there were two

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1 police cars right there?

2 A. Well, when I was walking towards my direction
3 of the car, police car crept up behind me. And once it
4 got close to me and I seen the lights on the ground, I
5 turned around.

6 Q. Okay.

7 A. And once I turned around, another cop car came
8 up, asked me where I was going.

9 Q. Okay. And you know at that point you have a
10 problem, right?

11 A. I was sure I did.

12 Q. Because you have something in your pants,
13 correct?

14 A. Sure, I did.

15 Q. The shotgun, correct?

16 A. Yes, I did.

17 Q. And knowing that you had already formulated the
18 intent to commit robbery in the first degree and having
19 a shotgun in your pants, all right, you didn't say to
20 the police officer, Here, take the gun, did you?

21 A. No, I did not.

22 Q. Now, it's your testimony here today that you
23 told Marcus Comer and Dekelvin Townsend that it was off,

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1 correct?

2 A. Yes, I did.

3 Q. May I assume they're out there waiting to
4 testify to corroborate your testimony?

5 A. Marcus Comer?

6 Q. Yes.

7 A. Yes.

8 Q. He's out there, he's going to testify in this
9 case?

10 A. If he's out there.

11 Q. Okay. I'll wait.

12 MR. WALTHER: Nothing further.

13 THE COURT: Mr. Deely, redirect examination?

14 REDIRECT EXAMINATION

15 BY MR. DEELY:

16 Q. Mr. Harris?

17 A. Yes.

18 Q. When you decided not to commit the robbery and
19 to go back to the car, did you know the police had been
20 called?

21 A. No, I didn't.

22 Q. Had you seen any police at that point?

23 A. No, I had not.

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1 Q. When is the first time you saw the police?

2 A. When I got to the intersection.

3 Q. Is it the area where the two police cars are
4 marked on State's Exhibit 4?

5 A. Yes.

6 Q. That's the first time you saw the police?

7 A. Yes.

8 Q. And that was after you were headed back toward
9 the car?

10 A. Yes.

11 Q. Now, the State said you have the most to lose
12 in this -- in this case. That's kind of self-evident,
13 isn't it?

14 A. Yes.

15 Q. You're the one on trial?

16 A. Yes.

17 Q. So whatever the statements are, you have the
18 most to lose. Isn't that correct?

19 A. Yes.

20 Q. You've also taken an oath today, haven't you?

21 A. Yes.

22 Q. And your oath is to tell the truth?

23 A. Yes.

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1 Q. In the prior robberies which you admitted that
2 you had been convicted of prior -- previously?

3 A. Yes.

4 Q. Did you use any deadly weapons? Did you use
5 any guns?

6 A. No, I did not.

7 Q. Have you ever used a gun before?

8 A. No, I did not. No, I haven't.

9 MR. DEELY: No further questions, Your Honor.

10 THE COURT: Mr. Walther?

11 CROSS-EXAMINATION

12 BY MR. WALTHER:

13 Q. You were convicted on two separate occasions of
14 robbery in the first degree, correct?

15 A. Yes, I have. Yes, I was.

16 Q. And -- and that was on one indictment, correct?

17 A. Yes.

18 Q. I'm going to show you something. I'm going to
19 ask you if it refreshes your memory. In 1999 you pled
20 guilty to robbery in the first degree, and that was part
21 of an indictment where there were a number of other
22 charges, correct?

23 A. Yes, it was.

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1 Q. Now, you see where it says robbery in the first
2 degree?

3 A. Yes.

4 Q. Do you see pled guilty?

5 A. Yes.

6 Q. PG? Do you see all those other charges?

7 A. Yes.

8 Q. All right. One of those other charges is
9 possession of a deadly weapon during the commission of a
10 felony, isn't it?

11 A. Yes.

12 Q. Is it your testimony today under oath, to tell
13 the truth, that during that robbery in 1999 you didn't
14 have a weapon on you?

15 A. I did not.

16 Q. Did a codefendant have a weapon?

17 A. I didn't have no codefendant in there.

18 Q. Now, in 2001 you pled guilty to yet another
19 robbery in the first degree, right?

20 A. Yes.

21 Q. And you recognize that charge of robbery first
22 degree, you pled guilty, right, on May 10th of 2001?

23 A. Yes.

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1 Q. And isn't it true that it's all part of one
2 indictment?

3 A. Yes.

4 Q. And isn't it true that one of the counts of
5 that indictment was possession of a deadly weapon during
6 the commission of a felony, correct? Right under
7 Robbery I.

8 A. Yes.

9 Q. And may I assume that your testimony here today
10 is consistent with your prior testimony; even though you
11 were charged with that, you didn't have in your
12 possession a deadly weapon?

13 A. I took a plea because I was scared.

14 Q. That's not what I asked you.

15 A. I never had a weapon.

16 Q. It's your testimony today that you did not have
17 a weapon?

18 A. Yes.

19 Q. You're sure about that?

20 A. Yes, I am.

21 Q. You don't want to recant that statement at all?

22 A. I never had a weapon in any of those robberies,
23 except the person in that case said that I had one.

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1 Q. All right. So at some point you had to stand
2 up in a court like this, all right, and admit that you
3 committed the crime of robbery in the first degree,
4 right?

5 A. In the prior robberies that I had?

6 Q. Yeah.

7 A. No, I didn't. Oh, yes. I did. Yes, I did.

8 Q. So you pled guilty to two robberies in an
9 indictment where there's two weapons counts, and a Judge
10 read to you the robbery in the first degree, correct?

11 A. Yes, he did.

12 Q. And isn't it true when he read to you the
13 statute of robbery in the first degree, he said you
14 displayed what appeared to be a deadly weapon?

15 A. No, I don't remember --

16 Q. Well, did you hurt somebody in those robberies?

17 A. No, I did not.

18 Q. Well, okay.

19 MR. WALTHER: Nothing further.

20 THE COURT: Mr. Deely, anything further?

21 MR. DEELY: No, the only thing I would say is
22 that the prior offenses were charged.

23 MR. WALTHER: Your Honor, excuse me. Is this

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1 argument or is this a question?

2 MR. DEELY: I have a question. I have a
3 question.

4 THE COURT: All right. Then ask the question.

5 REDIRECT EXAMINATION

6 BY MR. DEELY:

7 Q. In your prior robberies that the prosecutor
8 showed you the record of, the charges were carrying a
9 concealed deadly weapon. Is that correct?

10 A. Yes, it was.

11 Q. It didn't say a gun, did it?

12 A. No, it did not.

13 Q. You've never used a gun in any prior robbery,
14 have you?

15 A. No, I haven't.

16 MR. DEELY: Nothing further, Your Honor.

17 THE COURT: Mr. Walther, anything further?

18 MR. WALTHER: No, Your Honor.

19 THE COURT: Then Mr. Harris may step down.

20 Will there be any further evidence from the defendant?

21 MR. DEELY: Nothing further, Your Honor.

22 THE COURT: Mr. Deely rests.

23 Will there be any rebuttal evidence from the

1 Q. I show you State's Exhibit No. 1. That's a
2 copy of the 911 call from Mr. Taylor?

3 A. Yes.

4 Q. Did you at some point in this investigation
5 talk to Mr. Taylor?

6 A. Yes, I did.

7 Q. Is he an African-American gentleman?

8 A. He is.

9 Q. Have attempts been made by you to locate him
10 for purposes of testimony here today?

11 A. Yes. In fact, I did find him at some point
12 several months ago. He was living in a vehicle.
13 But since then, I don't know his whereabouts.

14 MR. DEELY: Your Honor, we'll stipulate the
15 tape is authentic, and we've agreed it's admissible
16 under at least a couple of the hearsay exceptions.
17 The defense will stipulate to that.

18 THE COURT: Without objection, the tape will
19 come into evidence as the State's first exhibit.

20 MR. WALTHER: With the Court's permission,
21 I'd ask that Detective Bramble be able to play the
22 tape.

23 THE COURT: For my information, the

1 MR. WALTHER: I have nothing further of this
2 witness.

3 THE COURT: Mr. Deely, you may
4 cross-examine.

5 MR. DEELY: I have no questions of this
6 witness.

7 THE COURT: Detective Bramble, you may step
8 down.

9 MR. WALTHER: The State calls Officer Scott
10 Slover.

11 OFFICER SCOTT SLOVER, having been called on
12 the part and behalf of the State as a witness,
13 being first duly sworn under oath, testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. WALTHER:

17 Q. Officer Slover, by whom are you employed?

18 A. Delaware State Police.

19 Q. As a trooper?

20 A. Yes.

21 Q. And how long have you been a trooper?

22 A. Going on six years now.

23 Q. Were you a trooper for the Delaware State

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1 approximate length of the tape?

2 MR. WALTHER: Ten minutes, at most.

3 THE WITNESS: The tape needs to be rewound.

4 MR. WALTHER: Okay.

5 (Audiotape played for the Court.)

6 MR. WALTHER: Your Honor, the purpose of it
7 was for Your Honor to hear the 911 call. There is
8 some discussion back and forth between the
9 dispatcher and a number of police officers. If
10 Your Honor would like to listen to that, we can,
11 but --

12 THE COURT: I'll leave it to you,
13 Mr. Walther.

14 MR. WALTHER: Thank you, Your Honor.

15 MR. DEELY: We don't object to it being cut
16 off there, because it becomes essentially radio
17 gobbledegook that only the officers, I believe,
18 would understand.

19 MR. WALTHER: That's still part of the
20 record, for purpose of that exhibit, because it was
21 part of the suppression hearing.

22 THE COURT: The State elects not to play it,
23 so let's move on with the evidence.

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1 Police back on May 7, 2003?

2 A. Yes.

3 Q. On that date, did you have occasion to
4 respond to the area of 325 South DuPont Highway?

5 A. Yes.

6 Q. And do you recall approximately what time
7 you were dispatched?

8 A. Approximately 2338 hours, 11:38 at night.

9 Q. And how long did it take you to get to the
10 area of 325 South DuPont Highway?

11 A. Approximately five minutes.

12 Q. When you were dispatched to that location,
13 what information, if any, did you have in regard to
14 why you were going to that location?

15 A. I was responding there because 325 South
16 DuPont Highway is a residence, and the occupants of
17 that residence called 911 because they reported
18 that there was a vehicle parked in their driveway
19 and subjects had exited the vehicle and placed
20 masks over their face.

21 MR. DEELY: Your Honor, the officer is now
22 engaging in hearsay. We've heard the tape. If he
23 can just say why he was dispatched, then what he

1. did.

2. THE COURT: That's, in essence, what he's
3. doing.

4. Mr. Walther.

5. MR. WALTHER: It's not hearsay, Your Honor,
6. because it's not offered for the truth or veracity,
7. but to tell you why he went to that location, to
8. give Your Honor some flavor.

9. THE COURT: Objection overruled. I don't
10. think it's hearsay.

11. A. The subjects had placed masks on their face.
12. One subject had put something that appeared to be a
13. pipe inside their clothing and walked northbound
14. toward Pockets.

15. THE COURT: Is that something that you
16. observed or were told?

17. THE WITNESS: That's something I was told by
18. the dispatchers.

19. BY MR. WALTHER:

20. Q. With that information, did you respond to
21. the area of 325 South DuPont Highway?

22. A. Yes, sir.

23. Q. When you came to that location, can you

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1. describe the police vehicle that you were driving?

2. A. I was driving a fully marked Crown Victoria,
3. lights on top, Delaware State Police emblems on the
4. side.

5. Q. When you're saying lights on top, you're
6. talking about 360's?

7. A. Yes, bar on top, red and blue lights.

8. Q. When you were dispatched there and went to
9. that location, was there a time when you put 360's
10. on, the police lights?

11. A. Yes.

12. Q. And did there come a time that you stopped
13. someone on DuPont Highway?

14. A. Yes.

15. Q. When did you put the lights on in
16. relationship to stopping this vehicle?

17. A. Immediately when I noticed the subject, so
18. right just north of the intersection of 13 and
19. Llangollen, on the right shoulder of 13 southbound.

20. Q. Was the police vehicle still moving when you
21. did that?

22. A. I believe it was, as I was coming to a stop.

23. Q. Did other officers respond?

1. A. Yes.

2. Q. Did you see other police vehicles there?

3. A. Yes.

4. Q. Were these also marked police vehicles with
5. lights?

6. A. Yes.

7. Q. Did you see whether or not they had their
8. lights on the top of their car on?

9. A. At the same time I activated my lights,
10. there was another trooper directly in front of me.

11. Q. And what officer was that?

12. A. Trooper McLaughlin, Delaware State Police.

13. Q. Was there a time when you saw Officer
14. Fletcher respond?

15. A. Yes.

16. Q. Did he respond to the police vehicle with
17. the lights on?

18. A. I don't recall when he had his lights on,
19. but yes, he did respond in a police vehicle.

20. Q. Do you recall at some point whether or not
21. you saw the lights in his car on?

22. A. Yes.

23. Q. Was that after you apprehended somebody on

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1. South DuPont Highway?

2. A. Yes.

3. Q. Can you tell the Court, please, what you did
4. as you approached 325 South DuPont?

5. A. Yes. As I was coming on 13 southbound, as I
6. explained a moment ago, Trooper McLaughlin was
7. directly in front of me. As we approached the red
8. light at Llangollen Boulevard, we were just north
9. of the red light itself, again, 13 southbound, I
10. noticed Trooper McLaughlin was in the right lane.
11. Like I said, I was directly behind him.

12. He came to a stop, and I noticed a subject
13. walking northbound on the right shoulder of 13
14. southbound, so walking against traffic. He was
15. only about --

16. Q. Go ahead.

17. A. He was only about a foot to the right of the
18. solid right line which separates the right lane
19. from the shoulder, and he was walking northbound
20. towards Pockets.

21. Q. So he was walking northbound on the shoulder
22. of the southbound lane?

23. A. Correct.

1 Q. Can you describe the shoulder?

2 A. It's a low asphalt shoulder approximately
3 12-foot wide.

4 Q. And what did you do?

5 A. As I said, Trooper McLaughlin stopped in the
6 right lane, and that's when I noticed the subject
7 standing or walking northbound on the shoulder. I
8 pulled my vehicle to the right of Trooper
9 McLaughlin's, so I was actually sitting in the
10 right shoulder. And at that time, I had my lights
11 on and whatnot.

12 Q. So right before you stopped him, he was
13 walking towards Pockets Liquors?

14 A. Correct.

15 Q. What did you do as you stopped him?

16 A. I stopped him. As I said, Trooper
17 McLaughlin's car was in the right lane. Mine was
18 on the right shoulder.

19 The subject was wearing blue coveralls and a
20 dark knit cap on his head. And I exited the
21 vehicle and asked him to remove his hands from his
22 pockets because he had his hands in his pockets at
23 the time. And I asked him to turn around because

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1 at this time, he was facing me. And at this time,
2 I was going to complete a patdown on the subject.

3 Q. For what purpose?

4 A. Because while I was traveling there, I'm
5 taking all the Recom from the dispatch -- what
6 Recom had stated on the radio as far as the subject
7 exited the vehicle, placed a mask over their face,
8 put what appeared to be a pipe inside their
9 clothing, and were walking toward Pockets, so I
10 took that into consideration.

11 I saw this subject on the shoulder. He had
12 a knit cap on. It wasn't pulled over his face, but
13 he had a knit cap on his head, he had dark clothing
14 on. So I exited the vehicle and wanted to pat him
15 down, because the large pipe could have possibly
16 been a weapon, could have been, you know, a
17 shotgun.

18 Q. Okay. Did you search him?

19 A. As I went to place my hands -- I didn't
20 actually put my hands on him yet. I had my left
21 hand toward his back and my right hand was out like
22 this, and I stated, Do you have any weapons on you?
23 which I always state to anybody I'm going to pat

1 down, before I even touched him. He said he had a
2 shotgun on him.

3 Q. Did you search him then? *Walter*

4 A. Yes.

5 Q. What did you find?

6 A. Found a 12-gauge shotgun inside his blue
7 coveralls that he was wearing.

8 Q. Did you remove it?

9 A. Yes, I did.

10 Q. Did you check to see if it was loaded?

11 A. Yes, it was. There was one round of Federal
12 7-1/2-shot shotgun shell in the chamber.

13 Q. Was the safety off?

14 A. The safety was off, and there was also one
15 in the magazine underneath, same round.

16 MR. WALTHER: Your Honor, may I have this
17 marked for identification, please?

18 THE COURT: Yes.

19 MR. WALTHER: Your Honor, by the way, I
20 brought this in and had Detective Bramble make sure
21 it was not loaded and it's not operable.

22 MR. DEELY: Without objection, Your Honor.

23 MR. WALTHER: I'll ask that it be marked as

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1 an exhibit.

2 THE COURT: Mark it as the next State's
3 Exhibit, please.

4 THE CLERK: State's Exhibit 2, Your Honor.
5 (State's Exhibit No. 2 was admitted into
6 evidence.)

7 BY MR. WALTHER:

8 Q: Officer Slover, I show you what has been
9 marked as State's Exhibit No. 2.

10 Is this the shotgun that you removed from
11 the man that you stopped on May 7, 2003 by Pockets
12 Liquor Store?

13 A. Yes, it is.

14 Q. Does it appear to be in essentially the same
15 condition as it was when you stopped that
16 individual?

17 A. Yes, it was.

18 Q. Is that individual that you stopped in the
19 courtroom today?

20 A. Yes, he is.

21 Q. Would you identify him, please?

22 A. Sure. Mr. Harris, seated to the right of
23 Mr. Deely.

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1 The testimony is this: That when Officer
2 Slover pulled up within 20 feet of him, the defendant
3 was walking towards Officer Slover, which is in a
4 northbound direction towards Pockets, and we're not
5 talking about it being two or three blocks away, Your
6 Honor. I believe the testimony was that it was 140 feet
7 from the top of the intersection there at Llangollen
8 Boulevard to Pockets. And, you know, we're only talking
9 about less than 40 yards from that area.

10 THE COURT: What did Corporal Slover testify to
11 in terms of, if he testified this way, the number of
12 steps that the defendant was observed walking
13 northbound, north -- north on the southbound shoulder?

14 MR. WALTHER: I don't know --

15 THE COURT: I don't know that he did. I'm
16 trying to get a sense --

17 MR. WALTHER: He qualified it. I'm sorry, Your
18 Honor.

19 THE COURT: Is it possible, from a fair
20 reading, his testimony was, well, maybe the defendant
21 was walking southbound along with traffic, but then
22 turned around and briefly started to walk -- see, what
23 I'm getting at? I'm just trying to see if Corporal

1 under Rule 609, in so far as credibility is concerned.

2 The State's not introduced any 404(b)-type evidence.

3 MR. WALTHER: Absolutely, Your Honor. And it
4 was for that purpose, because it's a crime of
5 dishonesty, robbery in the first degree.

6 THE COURT: Now, if I may interrupt again then?
7 Wouldn't it also be possible, and maybe I should be
8 asking this to Mr. Deely later, but wouldn't it also be
9 possible that the defendant was walking away from
10 Pockets, but still hadn't renounced or abandoned the
11 crime anyway?

12 MR. WALTHER: Absolutely, Your Honor. And if
13 you --

14 THE COURT: So I don't think the direction of
15 the walker, the defendant, is absolutely determined
16 necessarily one way or the other.

17 MR. WALTHER: But it's a significant factor.
18 All right? But the other thing, too, is it doesn't
19 really make sense if, as I've described it, this
20 epiphany that the defendant has right after Paul Nocho
21 tells him who's inside that he wouldn't say to Paul
22 Nocho, Hey, you know, that's it. But what does he do?
23 All right. He just has him go back to the car and wait

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1 Slover's testimony indicates just how long and how
2 established the northbound route was.

3 MR. WALTHER: Your Honor, we did not get into
4 that much detail. However, his testimony I -- in which
5 he was asked a number of times was that he was
6 walking -- his testimony was not that he saw him, he
7 stopped, and then he turned around. In fact, the only
8 testimony with regard to any turning around is when the
9 officer for public -- for his own safety instructed him
10 to turn around.

11 THE COURT: Yes, I believe the officer
12 testified to that about three times, at least.

13 MR. WALTHER: At least. And, you know, I think
14 Your Honor knows exactly where the case turns on. The
15 case turns on whether or not he was walking towards
16 Pockets or that he renounced and was walking away from
17 Pockets. And it all -- it will come down to who does
18 Your Honor believe. The State suggests that given the
19 circumstances of the defendant's background, given the
20 fact that he has so much to gain in his testimony,
21 and --

22 THE COURT: Now, the only -- the only way in
23 which I'm considering the prior robbery convictions is

1 there, placing him in jeopardy as a -- as the driver of
2 a getaway car. It just doesn't make sense he would do
3 that, especially with his background.

4 The issue comes down to, you know, whether or
5 not there was a renunciation that is a voluntary and
6 complete renunciation as that term is used. And
7 Subsection C(1) of Section 541 says when it's not a
8 voluntary and complete renunciation, it neither in whole
9 nor in part, if there is a belief that circumstances
10 exist which increase the probability of detection or
11 apprehension of the accused or another participant. The
12 State suggests that given all the circumstances and
13 given the defendant's uncorroborated testimony, even
14 uncorroborated by his own brother and even
15 uncorroborated by one of his own coconspirators, he says
16 it was a complete and voluntary renunciation.

17 The bottom line, Your Honor, is reason and
18 common sense dictates, all right, that he sees the
19 police coming. That when he sees the police coming, he
20 realizes that he's caught. He did nothing up to that
21 point. If he really was fed up with the life that he
22 had, he could have tossed the gun. He could have told
23 the police, Hey, all right. Here's the gun. Take it.

13

1 THE COURT: Walther, you may cross-examine.

2 MR. WALTHER: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. WALTHER:

5 Q. It is a fact that when you and Marcus Comer,
6 and Marcus Comer being your brother, before the robbery,
7 that you had a discussion with your coconspirators that
8 you were going to rob Pockets Liquors, correct?

9 A. Yes.

10 Q. In fact, it was your idea; you're the one with
11 the expertise, correct?

12 A. No, it was everybody's idea. Wasn't
13 particularly my idea.

14 Q. Well, everyone agreed, correct?

15 A. Yes.

16 Q. All right. And are you saying that it was
17 someone else's idea, not your idea, to commit a robbery
18 that night?

19 A. Not saying that it was -- repeat the question
20 again.

21 Q. Was it your idea to commit the robbery?

22 A. No, it was not.

23 Q. Whose idea was it?

14

1 A. I'm not sure whose idea was it, but I blended
2 in with the conversation.

3 Q. All right. So discussions took place before
4 you even left the house that you were going to do a
5 robbery with these other individuals, correct?

6 A. Yes.

7 Q. May I assume, then, you had a discussion about
8 how the robbery was going to occur, right?

9 A. Yes.

10 Q. In fact, isn't it true that you decided who was
11 going to do what?

12 A. Yes.

13 Q. In fact, you decided that Comer was going to be
14 the driver of the getaway car, right?

15 A. Comer?

16 Q. Excuse me. Nocho?

17 A. Yes.

18 Q. Right. And you decided that you and Marcus
19 Comer would go in and actually commit the robbery,
20 correct?

21 A. Yes.

22 Q. And you decided that Dekelvin Townsend would be
23 the lookout, correct?

15

1 A. Yes.

2 Q. Isn't it fair you were calling the shots that
3 evening?

4 A. Everybody agreed. I wasn't calling the shots.

5 Q. When you told them what their roles were, they
6 agreed, correct?

7 A. Yes.

8 Q. Now, before you left, did you make any attempt
9 to get any type of a disguise?

10 A. Yes, we did.

11 Q. You said yes, we did or yes, you did?

12 A. Yes, we did.

13 Q. All right. So everybody did. Whose idea was
14 it to get a disguise?

15 A. It wasn't nobody -- wasn't no particular
16 person's idea. Everybody assumed to get a disguise.

17 Q. Are you just saying that it seemed like a
18 reasonable thing to do, if you're going to commit a
19 robbery, that you have some type of disguise?

20 A. Yes.

21 Q. And because you didn't want to be apprehended,
22 correct?

23 A. Yes.

16

1 Q. And if somebody could see you with your face
2 exposed, you could be identified and convicted of
3 robbery again, right?

4 A. Yes.

5 Q. You knew that before you even left the house,
6 right?

7 A. Yes.

8 Q. So you decided to get a knit cap, correct?

9 A. Yes.

10 Q. And you decided to cut the holes out, correct?

11 A. Yes, I did.

12 Q. And you already decided that you were going to
13 use a weapon during that robbery, correct?

14 A. Once -- once I was told there was going to be
15 one, yes.

16 Q. Once you were told there was going to be one?

17 A. Yes.

18 Q. I thought you were the guy telling everybody
19 what they were going to do?

20 A. Yes, but somebody presented a weapon to me. I
21 didn't know that they had a weapon.

22 Q. Oh. All right. So somebody gave you a weapon?

23 A. Yes.

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STATEMENT OF CHARGES

Ryant N. Harris was charged by indictment and tried for Attempted Robbery First Degree, Possession of a Firearm During the Commission of a Felony, Conspiracy Second Degree. The following charges were Nolle Prossed prior to the commencement of the trial: Attempted Robbery First Degree, Possession of a Firearm During the Commission of a Felony, Wearing a Disguise During the Commission of a Felony, Carrying a Concealed Deadly Weapon, and Possession of a Firearm by a Person Prohibited. These charges were dropped in exchange for Harris' waiver of a jury trial.

The Attempted Robbery First Degree charge alleged that Mr. Harris attempted to commit a Robbery against Sunilkumar Patel an employee of Pockets Liquor Store. Mr. Harris and his co-defendants planned the robbery at a co-defendants house and they then traveled to the vicinity of Pockets Liquor Store. They then place ski masks over their heads and took a shotgun which they intended to use in the Robbery. These acts in there entirety, constituted a substantial step in a course of conduct planned to culminate in Robbery First Degree. The Possession of a Firearm During the Commission of a Felony charge alleged that Mr. Harris and his co-defendants did possess a firearm during the

commission of Attempted Robbery First Degree. The Conspiracy Second Degree alleged that Mr. Harris and his co-defendants on or about the 7th of May, 2003, when intending to commit Robbery First Degree or a related felony, did agree with one another to engage in a course of conduct constituting Robbery First Degree and further that an overt act was committed in pursuance of said Conspiracy.

NATURE OF DEFENSE AT TRIAL

The defense at trial was the defense of renunciation. The argument was that Mr. Harris' actions manifested a voluntary and complete renunciation of the criminal purpose under 11 Del. C. § 541 (a) (b).

SUMMARY OF THE EVIDENCE

Prior to trial a suppression hearing seeking to exclude the shotgun was held. The Court ruled that the State Trooper that frisked Mr. Harris had an articulable reasonable suspicion for the weapons search.

On May 7, 2003, Delaware State Troopers arrested Mr. Harris and two of the three co-defendants in the vicinity of Pockets Liquor Store. The fourth co-defendant was arrested sometime later as a result of information obtained during the investigation. A New Castle Grand Jury indicted all four individuals. All of the co-defendants except Mr. Harris accepted the plea offers made by the State. Mr. Harris rejected the State's offer. Mr. Harris waived his right to a jury trial and the case against Mr. Harris proceeded to trial in the Superior Court before the Honorable Richard R. Cooch on February 19, 2004. Mr. Harris was convicted of the three counts for which he was tried. Mr. Harris received a sentence of eleven (11) years at Level 5 suspended after ten (10) years for probation. After a timely Notice of Appeal was filed, briefing was scheduled and this is the Appellant's brief on appeal.

The trial began on February 19, 2004. Mr. Harris waived his right to a jury trial. (A-12,13). In exchange for the

waiver the State agreed to drop counts III, IV and V. (A-12). The prosecutor gave his opening statement to the Court. (A-14-16). Defense Counsel then gave his opening statement. (A-16-17). He claimed that the evidence would show that Mr. Harris and the three co-defendants were at Mr. Harris' house. (A-16). While there they decided to commit a robbery. (A-16). They got into a co-defendant's car and drove 325 DuPont. (A-16). They parked the car at that address. (A-16). They got out of the car and Mr. Harris placed the shotgun inside his coveralls. (A-16). He and the other co-defendants put their masks on and walked across the street to the wooded vacant lot towards the liquor store. (A-16). Mr. Harris never in fact went into the store and that when the police arrived Mr. Harris was walking away from the liquor store. (A-16). When stopped he was about fifty feet from the car. (A-16). That at least three of the co-defendants were walking away from the scene prior to the arrival of the police with out knowing that a 911 call was made. (A-16). Therefore, since they were leaving the scene prior to the arrival of the police and before they had knowledge that the police were called, they had in fact renounced their plan to rob Pockets Liquor Store. (A-16,17). The Defense stipulated that Pockets was a liquor

store. (A-17). That it was open and a cash business. (A-17). The Defense further stipulated that the store was open and that there were people on duty in the store. (A-17).

The State called Detective Bramble as its first witness. (A-17). He authenticated the 911 tape. (A-17). The Defense stipulated to the authenticity of the tape and agreed to the tape being played. (A-18).

The State then called Officer Slover of the Delaware State Police. (A-18). He testified that he responded to the area of 325 DuPont Highway. (A-18). He stated that upon being dispatched he was informed that the subjects had put on masks and one put what appeared to be a pipe in his pants. (A-19). Upon arriving in the area he noticed a Harris just north of the intersection of Route 13 and Llangollen on the right shoulder. (A-19). Harris was walking northbound towards Pockets. (A-19). When the officer stopped Harris he was wearing coveralls and a dark knit cap. (A-20). The officer asked him to remove his hands from his pockets and turn around. (A-20). Prior to patting Harris down the officer asked if he had any weapons to which Harris responded that he had a shotgun. (A-20). As the officer had Harris stopped he saw a vehicle attempting to leave 325 South DuPont Highway and he asked Corporal

Fletcher to stop the car. (A-21). The area where Harris was stopped was a dark area illuminated only by the traffic light. (A-24). It was raining. (A-24). Harris was stopped approximately 150 to 200 feet from Pockets. (A-23,25).

The State next called Officer Fletcher. (A-31). Officer Fletcher stopped the car and driver, Paul Nocho, attempting to leave 325 South DuPont Highway. (A-31). The officer also testified that he heard a radio call that a county officer stopped another individual across Route 13 from where Harris was stopped. (A-32).

The State next called Paul Nocho. (A-33). Nocho confirmed that Harris and the three co-defendants were together at the house. (A-33). He confirmed that they planned the robbery while at the house and then left in the car with disguises and the shotgun. (A-34). He confirmed that he drove the four of them to the house near Pockets. (A-34,35). He stated that his role was to go into the store to case it and then be the get away driver. (A-35). He went into the store and on his way back to the car he talked with Harris and told him there were people in the store. (A-35,36). He did not see the other two co-defendants while returning to the car. (A-36) He stated that as part of his plea agreement he would testify at the co-defendants'

trials. (A-36,37). On cross he testified that the location where Harris was stopped was farther away from Pockets than the point where he talked to Harris after casing the store. (A-38). He further stated that Harris would have to walk away from Pockets to get to the point where he was stopped by the police. (A-38).

The State rested. (A-41).

The defense then called Mr. Harris. (A-41). Harris testified that as Nocho walked back to the car, Harris decided that the robbery was a mistake. (A-42). He told the other two co-defendants, Comer and Townsend, "It's not going to happen." (A-42). He told them to walk home and meet him at the house. (A-42). Then Harris waited until the two co-defendants crossed Route 13, and then he began to walk back to the car. (A-43). Harris stated that when the police stopped him he was getting ready to go around the corner back to the car. (A-43). He further stated that Corporal Slover was wrong when he stated that Harris was walking towards Pockets when he stopped Harris. (A-50). He said he turned around from the direction he was walking when he noticed the car behind him. (A-50,51). The rest of Harris' testimony was in general agreement with the facts previously outlined.

The closing arguments restated the prosecution arguing that Harris was walking toward Pockets and that the person mentioned as coming back on the 911 tape could easily have been one of the co-defendants. The Court said it was only considering Harris' prior record as to credibility. (A-54). The Court asked why the other co-defendants were not in the area and the State argued that they left upon seeing the police. (A-55). The State argues that the person mentioned in the 911 call could be a co-defendant. (A-55) The Court asked why was Harris farther away from Pockets when stopped by the police then when he talked to Nocho. (A-55). The State responded that he need to meet with the other two co-defendants to complete the robbery. (A-55). The defense argued that Harris was walking away from Pockets before ever seeing the police and that the person mentioned on the 911 tape as coming back could only be Harris. (A-56). The defense argued that the renunciation occurred when Harris said he could not go through with the robbery and told the co-defendants to go home. (A-56). The defense then discussed the renunciation. (A-56,57). The Court then asked what analysis applied to the possession of a deadly weapon count. (A-57). The defense responded that the firearm charge was directly linked to the felony and if renunciation

was found the charge would fail. (A-57).

The Court then made its finding. The Court began by reciting some of the facts and discussing the defense of renunciation. (A-58-60). The Court further found that based on its assessment of the credibility of the witnesses and the evidence presented the defense of renunciation was not established by a preponderance of the evidence. (A-61). The Court further found that irrespective of the defense raised it found beyond a reasonable doubt that all of the charged offenses were committed. (A-61). A presentence investigation was ordered. (A-61).

SIGNIFICANT APPLICATIONS AND RULINGS

The only unfavorable ruling impacting the defense was the Court's ruling denying the suppression of the shotgun evidence.

SENTENCE

The Defendant was sentenced April 23, 2004. His sentence for the Attempted Robbery First Degree was that effective May 7, 2003, he was sentenced to four years at Level V. On the count of Possession of a Firearm During the Commission of a Felony he is to be imprisoned for eight years at Level V, consecutive to the forgoing, suspended after serving six years at Level V, for two years at Level IV, home confinement. The Defendant is to be held at Level V until space is available at Level IV. Level IV home confinement is suspended after six months for the balance to be served at Level III. The first five years of the sentence is a mandatory term of incarceration. On the count of Conspiracy Second Degree he was sentenced to one year Level 5 suspended immediately for one year of Level II concurrent probation.